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CUMULATIVE POCKET SUPPLEMENT

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COMMISSIONERS

TITLES 19-20

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PUBLISHER'S NOTE

Amendments to laws and new laws enacted since the publication of the bound volume down to and including the 2013 regular session are compiled in this supplement and will be found under their appropriate section numbers.

This publication contains annotations taken from decisions of the Idaho Supreme Court and the Court of Appeals and the appropriate federal courts. These cases will be printed in the following reports:

Idaho Reports
Pacific Reporter, 3rd Series
Federal Supplement, 2nd Series
Federal Reporter, 3rd Series
United States Supreme Court Reports, Lawyers' Edition, 2nd Series

Title and chapter analyses, in these supplements, carry only laws that have been amended or new laws. Old sections that have nothing but annotations are not included in the analyses.

Following is an explanation of the abbreviations of the Court Rules used throughout the Idaho Code.

I.R.C.P.	Idaho Rules of Civil Procedure
I.R.E.	Idaho Rules of Evidence
I.C.R.	Idaho Criminal Rules
M.C.R.	Misdemeanor Criminal Rules
I.I.R.	Idaho Infraction Rules
I.J.R.	Idaho Juvenile Rules
I.C.A.R.	Idaho Court Administrative Rules
I.A.R.	Idaho Appellate Rules

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USER'S GUIDE

To assist the legal profession and the layperson in obtaining the maximum benefit from the Idaho Code, a User's Guide has been included in the first, bound volume of this set.

ADJOURNMENT DATES OF SESSIONS OF LEGISLATURE

Year	Adjournment Date
2005	April 6, 2005
2006	April 11, 2006
2006 (E.S.)	August 25, 2006
2007	March 30, 2007
2008	April 2, 2008
2009	May 8, 2009
2010	March 29, 2010
2011	April 7, 2011
2012	March 29, 2012
2013	April 4, 2013

TITLE 19

CRIMINAL PROCEDURE

CHAPTER 1

PRELIMINARY PROVISIONS

19-101. Legal conviction necessary to punishment.

Withheld Judgment.

Outstanding withheld judgment based on a guilty plea qualified as a conviction under Idaho law. United States v. Sharp, 145 Idaho 403, 179 P.3d 1059 (2008).

19-106. Rights of defendant.

A.L.R. Determination of request for exclusion of public from state criminal trial in order to preserve safety, confidentiality, or well-being of witness who is not undercover police officer — Issues of proof, consideration of alternatives, and scope of closure. 32 A.L.R.6th 171.

Basis for exclusion of public from state criminal trial in order to preserve safety, confidentiality, or well-being of witness who is not undercover police officer. 33 A.L.R.6th 1.

Construction and application of speedy trial act, 18 USCS §§ 3161 to 3174 — United States supreme court cases. 46 A.L.R. Fed. 2d 129.

CHAPTER 2

PREVENTION OF PUBLIC OFFENSES

19-201. Lawful resistance.

Cited in: State v. McNeil, 141 Idaho 383, 109 P.3d 1125 (Ct. App. 2005).

Defense of Property.

Even if the victim's removal of a box of documents from defendant's vehicle was unlawful, defendant's actions could not be reasonably interpreted as resistance necessary to prevent an offense because, at the time defendant battered the victim, the box had already been removed from his vehicle and he did not know its location; therefore, no resistance could have prevented an unlawful taking. Further, no evidence suggested that there was an imminent threat that the victim would destroy the documents, which could justify resistance to prevent such injury; therefore, the evidence did not support the legal theory of defense of property and, thus, the magistrate did not err in refusing to give that jury instruction. State v. Walsh, 141 Idaho 870, 119 P.3d 645 (Ct. App. 2005).

19-202. Resistance by threatened party.

Analysis

Defense of property.
Resistance not warranted.

Defense of Property.

Even if the victim's removal of a box of documents from defendant's vehicle was unlawful, defendant's actions could not be reasonably interpreted as resistance necessary to prevent an offense because, at the time defendant battered the victim, the box had already been removed from his vehicle and he did not know its location; therefore, no resistance could have prevented an unlawful taking. Further, no evidence suggested that there was an imminent threat that the victim would destroy the documents, which could justify resistance to prevent such injury; therefore, the evidence did not support the legal theory of defense of property and, thus, the magistrate did not err in refusing to give that jury instruction. State v. Walsh, 141 Idaho 870, 119 P.3d 645 (Ct. App. 2005).

Resistance Not Warranted.

Despite defendants' contention that it was unlawful, city's conduct in removing a Ten Commandments monument from a public park did not constitute an imminent threat of personal injury, robbery, or other specific crime for which resistance is permitted, and, thus, appellants who objected to its removal were not entitled to prevent it by committing the separate offense of resisting and obstructing an officer. State v. Gamma, 143 Idaho 751, 152 P.3d 622 (Ct. App. 2006).

19-202A. Legal jeopardy in cases of self-defense and defense of other threatened parties.

Cited in: State v. McNeil, 141 Idaho 383, 109 P.3d 1125 (Ct. App. 2005).

Resistance Not Warranted.

Despite defendants' contention that it was unlawful, city's conduct in removing a Ten Commandments monument from a public park did not constitute an imminent threat of personal injury, robbery, or other specific crime for which resistance is permitted, and, thus, appellants who objected to its removal were not entitled to prevent it by committing the separate offense of resisting and obstructing an officer. State v. Gamma, 143 Idaho 751, 152 P.3d 622 (Ct. App. 2006).

19-203. Resistance by other parties.

Analysis

Resistance not warranted.
Use as defense.

Resistance Not Warranted.

Despite defendants' contention that it was unlawful, city's conduct in removing a Ten Commandments monument from a public park did not constitute an imminent threat of personal injury, robbery, or other specific crime for which resistance is permitted, and, thus, appellants who objected to its removal were not entitled to prevent it by committing the separate offense of resisting and obstructing an officer. State v. Gamma, 143 Idaho 751, 152 P.3d 622 (Ct. App. 2006).

Use as Defense.

No reasonable view of the evidence supported giving an instruction on the defense of others under this section; defendant should not have hit his friend's assailant with a beer bottle where the circumstance were such that the risk of further harm to the friend was slight; the beer bottle was a deadly weapon used against an unarmed person. State v. McNeil, 141 Idaho 383, 109 P.3d 1125 (Ct. App. 2005).

19-204. Prevention of offenses by officers of justice.

Opinions of Attorney General. No authority exists for a city to appoint the employees of a private company to serve as "peace officers." OAG 08-02.

19-224. Commanding rioters to disperse. — Where any number of persons, whether armed or not, are unlawfully or riotously assembled, the sheriff of the county and his deputies or the officials governing the town or city shall go among the persons assembled, or as near to them as possible, and command them in the name of the people of the state immediately to disperse.

History.

I.C., § 19-224, as added by 1972, ch. 336, § 3, p. 844; am. 2012, ch. 20, § 5, p. 66.

Compiler's Notes. The 2012 amendment by ch. 20, substituted "his deputies or the officials governing the town or city shall" for "his deputies, the officials governing the town or city, or the justices of the peace and constables thereof, or any of them, must".

19-227. Proclamation of insurrection. — When the governor is satisfied that the execution of civil or criminal process has been forcibly resisted in any county by bodies of men, or that combinations to resist the execution of process by force exist in any county, and that the power of the county has been exerted and has not been sufficient to enable the officer having the process to execute it, he may, on the application of the officer or of the prosecuting attorney, by proclamation to be published in such papers as he shall direct, declare the county to be in a state of insurrection and may order into the service of the state such number and description of volunteer or uniform companies, or other militia of the state as he shall deem necessary to serve for such term, and under the command of such officer or officers, as he shall direct.

History.

Cr. Prac. 1864, § 46, p. 218; R.S., R.C., & C.L., § 7406; C.S., § 8651; I.C.A., § 19-227; am. 2012, ch. 20, § 6, p. 66.

Compiler's Notes. The 2012 amendment, by ch. 20, deleted "or probate judge of the county" preceding "by proclamation" near the middle of the section.

CHAPTER 3

LOCAL JURISDICTION OF PUBLIC OFFENSES

19-315. Conviction or acquittal in another state.

ANALYSIS

Ineffective assistance of counsel.
Police chase.

Ineffective Assistance of Counsel.

In a grand theft by deception case, the district court did not err in summarily dismissing defendant's claims that his trial counsel was ineffective for failing to file a motion to dismiss the charges, as such a motion would not have succeeded because neither of defendant's prior federal or Utah prosecutions encompassed his Idaho actions and victims. Cook v. State, 145 Idaho 482, 180 P.3d 521 (Ct. App. 2008).

Police Chase.

Defendant's prosecution for eluding a peace officer in violation of § 49-1404(2), following a conviction in Washington on the same charge, stemming from a high-speed chase across both states, was not precluded by this section, because the act that was the basis for the charge in Idaho was not the same act that gave rise to charges in Washington, and at no time did the two states share venue over an act which was charged as a public offense. The defendant acted in Idaho, followed by an action in Washington. State v. Madden, 147 Idaho 886, 216 P.3d 644 (Ct. App. 2009).

CHAPTER 4

TIME OF COMMENCING CRIMINAL ACTIONS

19-401. No statute of limitations for certain felonies. — Notwithstanding any other provision of law, there is no limitation of time within which a prosecution for the following crimes must be commenced:

(1) Murder;

(2) Voluntary manslaughter;

(3) Rape pursuant to section 18-6101(3) through (9), or section 18-6108(3) through (7), Idaho Code;

(4) Sexual abuse of a child or lewd conduct with a child as set forth in sections 18-1506 and 18-1508, Idaho Code; or

(5) An act of terrorism as set forth in sections 18-8102, 18-8103, 18-3322, 18-3323 and 18-3324, Idaho Code.

History.

I.C., § 19-401, as added by 1972, ch. 336, § 5, p. 844; am. 2000, ch. 277, § 2, p. 900; am. 2001, ch. 142, § 1, p. 507; am. 2003, ch. 280, § 2, p. 756; am. 2006, ch. 39, § 1, p. 116; am. 2010, ch. 352, § 9, p. 920; am. 2011, ch. 27, § 3, p. 67.

Compiler's Notes. The 2006 amendment, by ch. 39, rewrote the section which formerly read: "There is no limitation of time within which a prosecution for murder, voluntary manslaughter, or rape pursuant to section 18-6101 2., 3., 4., 5. or 7., or section 18-6108, Idaho Code, must be commenced. They may be commenced at any time after the death or rape of the person killed or raped."

Section 3 of S.L. 2006, ch. 39 declared an emergency. Approved March 13, 2006.

The 2010 amendment, by ch. 352, updated the section references in subsection (3) in light of the 2010 amendments of §§ 18-6101 and 18-6108.

The 2011 amendment, by ch. 27, substituted "section 18-6101(3) through (9)" for "section 18-6101(3) through (8)" in subsection (3).

Relation to Torts.

Summary judgment was properly granted to a father in a tort case based on alleged sexual molestation of two daughters since the action was time barred. The fraudulent concealment exception in § 5-219 applies only to professional malpractice claims. Glaze v. Deffenbaugh, 144 Idaho 829, 172 P.3d 1104 (2007).

19-402. Commencement of prosecutions for felonies. — A prosecution for any felony other than those specified in section 19-401, Idaho Code, must be commenced by the filing of the complaint or the finding of an indictment within five (5) years after its commission provided however, a prosecution under section 18-1506A, Idaho Code, must be commenced within three (3) years after the date of initial disclosure by the victim.

History.

I.C., § 19-402, as added by 1972, ch. 336, § 5, p. 844; am. 1985, ch. 157, § 1, p. 416; am. 1989, ch. 270, § 2, p. 658; am. 1990, ch. 210, § 3, p. 467; am. 1992, ch. 146, § 1, p. 441; am. 2000, ch. 277, § 3, p. 900; am. 2001, ch. 142, § 2, p. 507; am. 2002, ch. 222, § 9, p. 623; am. 2003, ch. 280, § 3, p. 756; am. 2006, ch. 39, § 2, p. 116.

Compiler's Notes. The 2006 amendment, by ch. 39, rewrote the section which formerly read: **"Commencement of prosecutions for crimes against children and other felonies.** (1) A prosecution for any felony other than murder, voluntary manslaughter, rape pursuant to section 18-6101 2., 3., 4., 5. or 7., or section 18-6108, Idaho Code, or any felony committed upon or against a minor child, or an act of terrorism as set forth in sections 18-8102, 18-8103, 18-3322, 18-3323 and 18-3324, Idaho Code, must be commenced by the filing of the complaint or the finding of an indictment within five (5) years after its commission. Except as provided in subsection (2) of this section, a prosecution for any felony committed upon or against a minor child must be commenced within five (5) years after the commission of the offense by the filing of the complaint or a finding of an indictment.

"(2) A prosecution under section 18-1506 or 18-1508, Idaho Code, must be commenced within five (5) years after the date the child reaches eighteen (18) years of age.

"(3) A prosecution under section 18-1506A, Idaho Code, must be commenced within three (3) years after the date of initial disclosure by the victim.

"(4) Notwithstanding any other provision of law, an indictment may be found, or an information instituted, at any time without limitation for a prosecution under section 18-8103, 18-3322, 18-3323 or 18-3324, Idaho Code."

Section 3 of S.L. 2006, ch. 39 declared an emergency. Approved March 13, 2006.

19-403. Misdemeanors. — (1) Except as provided in subsections (2) and (3) of this section, a prosecution for any misdemeanor must be commenced by the filing of the complaint or the finding of an indictment within one (1) year after its commission.

(2) A prosecution for failure to report or failure to cause to be reported the abuse, abandonment or neglect of a child as provided for in section 16-1605, Idaho Code, must be commenced by the filing of the complaint or the finding of an indictment within four (4) years after its commission.

(3) A prosecution for misuse of funds as provided for in section 18-5702(1), Idaho Code, must be commenced by the filing of the complaint or the finding of an indictment within five (5) years after its commission.

History.

I.C., § 19-403, as added by 1972, ch. 336, § 5, p. 844; am. 2007, ch. 124, § 1, p. 374; am. 2008, ch. 56, § 5, p. 146.

Compiler's Notes. The 2007 amendment, by ch. 124, added the subsection (1) designation and the exception therein; and added subsection (2).

The 2008 amendment, by ch. 56, in subsection (1), substituted "subsections (2) and (3)" for "subsection (2)"; and added subsection (3).

Section 6 of S.L. 2008, ch. 56 declared an emergency. Approved March 3, 2008.

CHAPTER 5

COMPLAINT AND WARRANT OF ARREST

19-503. Who are magistrates. — The following persons are magistrates:

(1) The justices of the supreme court.
(2) The judges of the court of appeals.
(3) The district judges.
(4) Magistrates of the district court.

History.

Cr. Prac. 1864, § 101, p. 226; R.S., R.C., & C.L., § 7511; C.S., § 8708; I.C.A., § 19-503; am. 1972, ch. 35, § 1, p. 55; am. 2012, ch. 20, § 7, p. 66.

Compiler's Notes. The 2012 amendment, by ch. 20, added subsection (2) and redesignated former subsections (2) and (3) as present subsections (3) and (4).

19-510A. Peace officers' powers to employees of the state board of correction. — All employees of the state board of correction who receive peace officer certification from the Idaho peace officer standards and training council shall have all the authority given by statute to peace officers of the state of Idaho. All other employees designated by the board of correction pursuant to section 20-209C, Idaho Code, shall be empowered with the rights and duties of peace officers when engaged in transportation of prisoners or apprehension of prisoners or wards who have escaped, or apprehension and arrest of persons who are suspected of having violated the terms and conditions of their probation or parole, or when present with and at the request of a local, state or federal law enforcement officer.

History.

I.C., § 19-510A, as added by 1973, ch. 170, § 1, p. 359; am. 1980, ch. 100, § 1, p. 220; am. 2005, ch. 131, § 1, p. 417; am. 2011, ch. 28, § 1, p. 70.

Compiler's Notes. Section 2 of S.L. 2005, ch. 131 is compiled as § 19-5109.

The 2011 amendment, by ch. 28, in the second sentence, deleted "classified" following "All other" near the beginning and inserted "or when present with and at the request of a local, state or federal law enforcement officer" at the end.

19-512. Direction to officers throughout state. — If a warrant is issued by a magistrate, it may be directed generally to any sheriff, constable, marshal or policeman in the state, and may be executed by any of those officers to whom it may be delivered.

History.
Cr. Prac. 1864, § 109, p. 227; R.S., R.C., & C.L., § 7523; C.S., § 8717; I.C.A., § 19-512; am. 1951, ch. 244, § 1, p. 516; am. 2012, ch. 20, § 8, p. 66.

Compiler's Notes. The 2012 amendment, by ch. 20, deleted "justice of the Supreme Court, judge of a District Court, probate judge, justice of the peace, or any other" preceding "magistrate" near the beginning of the section.

CHAPTER 6

ARREST, BY WHOM AND HOW MADE

19-603. When peace officer may arrest.

ANALYSIS

"Hot pursuit."
Offense in presence of officer.
Officers' discretion and duty.
Right of search.
Search incident to arrest.

"Hot Pursuit."
A temporarily opened attached garage is a place in which a person would have a reasonable expectation of privacy. Nevertheless, police officers who activated their overhead lights as defendant pulled into his driveway, and then followed him into his garage, had probable cause to arrest defendant for battery based on victim's specific identification of him as her attacker and their observation that he and his vehicle matched the description provided by the victim. State v. Jenkins, 143 Idaho 918, 155 P.3d 1157 (2007).

Offense in Presence of Officer.
Offense of driving without privileges was committed by defendant in the presence of two police officers, and the officers had the authority to arrest defendant, where the officers saw a vehicle being driven and defendant admitted that he had been driving the vehicle and that his driver's license was suspended. State v. Campbell, 145 Idaho 754, 185 P.3d 266 (Ct. App. 2008).

Officers' Discretion and Duty.
Where police officers had observed defendant smoking a marijuana cigarette, their statement that defendant would be subject to arrest if he did not turn over what drugs he had did not render defendant's subsequent consent to search his truck involuntary, as it merely informed defendant of their intention to do something that was within their authority based on the circumstances. State v. Garcia, 143 Idaho 774, 152 P.3d 645 (Ct. App. 2006).

Right of Search.
Defendant's conviction for possession of a controlled substance was improper where the evidence found in his wallet should have been suppressed; although a drug dog's alert to defendant's vehicle, and subsequent failure of a search of that vehicle to disclose contraband, might have caused the officers' to be suspicious, the officers could not lawfully arrest him on the basis of their suspicions alone. State v. Gibson, 141 Idaho 277, 108 P.3d 424 (Ct. App. 2005).

Search Incident to Arrest.
Landing located immediately adjacent to entry of bar and staffed by a bouncer checking for identification constituted part of a "premises licensed to sell liquor or beer," giving a police officer statutory authority to request identification from defendant. When defendant refused to produce this identification, officer could legally arrest him and search him incident to that arrest, and drugs found on his person during that search were admissible. State v. Conant, 143 Idaho 797, 153 P.3d 477 (2007).

A.L.R. Authority of public official, whose duties or functions generally do not entail traffic stops, to effectuate traffic stop of vehicle. 18 A.L.R.6th 519.

19-604. When private person may arrest.

A.L.R. Authority of public official, whose duties or functions generally do not entail traffic stops, to effectuate traffic stop of vehicle. 18 A.L.R.6th 519.

19-611. Breaking doors and windows.

Restrictions on Execution of Warrant.

Defendant's motion to suppress evidence of drugs found during search incident to an arrest was proper, where the arresting officer stood outside a gate on defendant's property and told him there was misdemeanor warrant for his arrest, defendant came to where officer was standing, and during search incident to arrest, drugs were were found; the area just outside defendant's gateway was a public place for purposes of an arrest warrant with a public place only limitation. State v. Reyna, 142 Idaho 624, 130 P.3d 1162 (Ct. App. 2005).

19-616. Telecommunication of warrant for service. — A warrant of arrest may be sent by telecommunication process or facsimile process to one (1) or more peace officers and a copy of a warrant sent in such manner is as effectual in the hands of any officer, and he must proceed in the same manner under it as though he held an original warrant.

History.

R.S., R.C., & C.L., § 7553; C.S., § 8739; I.C.A., § 19-616; am. 2012, ch. 78, § 1, p. 227.

Compiler's Notes. The 2012 amendment, by ch. 78, substituted "Telecommunication of warrant" for "Telegraphing warrant" in the section heading and rewrote the section, which formerly read: "A justice of the Supreme Court or probate judge may, by an indorsement under his hand upon a warrant of arrest, authorize the service thereof by telegraph, and thereafter a telegraphic copy of such warrant may be sent by telegraph to one or more peace officers, and such copy is as effectual in the hands of any officer, and he must proceed in the same manner under it as though he held an original warrant issued by the magistrate making the indorsement."

19-617. Telegraphic copy of warrant. [Repealed.]

Repealed by S.L. 2012, ch. 78, § 2, effective July 1, 2012.

History.

R.S., R.C., & C.L., § 7554; C.S., § 8740; I.C.A., § 19-617.

19-625. Detention for obtaining evidence of identifying physical characteristics.

Applicability.

Police officers were not required to comply with the warrant requirements of this section in order to test a DNA sample from a water bottle defendant drank from when defendant was lawfully in custody at the time he used the bottle. State v. Piro, 141 Idaho 543, 112 P.3d 831 (Ct. App. 2005).

CHAPTER 7

FRESH PURSUIT LAW

19-705. "Fresh pursuit" defined.

Requirements.

The only evidence necessary to show fresh pursuit is that the officer had knowledge that a crime or infraction was committed within his jurisdiction and the officer pursued the suspect beyond the jurisdiction with the purpose of making an arrest, citing the suspect, or investigating the offense. Whether the officer's lights are flashing and siren is blaring is objective evidence of the officer's pursuit, but it is not necessary. It is well within an officer's discretion to wait for a safe point to stop a vehicle. State v. Scott, 150 Idaho 123, 244 P.3d 622 (Ct. App. 2010).

CHAPTER 8

EXAMINATION OF CASE AND DISCHARGE OR COMMITMENT OF ACCUSED

19-804. Preliminary examination.

Waiver.

Where a complaint alleges that the defendant has committed a felony, he has a right to a preliminary hearing. The purpose of the preliminary hearing is to determine whether there is probable cause to believe that the defendant committed the felony. A defendant who waives the right to a preliminary hearing waives the right to a probable cause determination regarding the charged felony. State v. Stewart, 149 Idaho 383, 234 P.3d 707 (2010).

19-815A. Challenging sufficiency of evidence of preliminary examination.

Analysis

Conditional pleas.
—Reservation of right to appeal.

Conditional Pleas.

—Reservation of Right to Appeal.

Based on the theory by which the State attempted to show that a previously recorded video was "obtained" for purposes of § 18-6609(2)(b) when the defendant added derogatory comments and posted the video on the internet, defendant's challenge to the sufficiency of evidence under this section was properly granted. State v. McLellan, — Idaho —, 294 P.3d 203 (Ct. App. 2013).

19-817. Bailable offenses — Order admitting to bail.

Authority of Sheriff.

County commissioners' supervisory authority to control other constitutional officers did not extend to the sheriff's bail procedures. The commissioners' statutory duties under §§ 20-622 and 31-1503 do not encompass control of bail, which is a matter within the sheriff's authority under this section and §§ 8-106 and 31-2202(6). Allied Bail Bonds, Inc. v. County of Kootenai, 151 Idaho 405, 258 P.3d 340 (2011).

19-819. Form of commitment. — The commitment must be to the following effect:

County of (as the case may be). The state of Idaho to the sheriff of the county of ....:

An order having been this day made by me, that A.B. be held to answer upon a charge of (stating briefly the nature of the offense, and giving as near as may be the time when and the place where the same was committed), you are commanded to receive him into your custody and detain him until he is legally discharged.

Dated this .... day of ...., ...

History.

Cr. Prac. 1864, § 165, p. 233; R.S., R.C., & C.L., § 7583; C.S., § 8761; I.C.A., § 19-719; am. 2007, ch. 90, § 9, p. 246.

Compiler's Notes. The 2007 amendment, by ch. 90, deleted the reference to the twentieth century from the date in the form.

19-851. Right to representation by counsel — Definitions. — In this act, the term:

(1) "Defending attorney" means any attorney employed by the office of public defender, contracted by the county or otherwise assigned to represent adults or juveniles at public expense;

(2) "Detain" means to have in custody or otherwise deprive of freedom of action;

(3) "Expenses," when used with reference to representation under this act, includes the expenses of investigation, other preparation and trial;

(4) "Indigent person" means a person who, at the time his need is determined pursuant to section 19-854, Idaho Code, is unable to provide for the full payment of an attorney and all other necessary expenses of representation;

(5) "Serious crime" means any offense the penalty for which includes the possibility of confinement, incarceration, imprisonment or detention in a correctional facility, regardless of whether actually imposed.

History.

1967, ch. 181, § 1, p. 599; am. 1968 (2nd E. S.), ch. 10, § 1, p. 20; am. 1972, ch. 27, § 1, p. 39; am. 1972, ch. 385, § 1, p. 1117; am. 1995, ch. 59, § 1, p. 130; am. 2005, ch. 93, § 1, p. 313; am. 2013, ch. 220, § 1, p. 515.

Compiler's Notes. The term "this act" refers to S.L. 1967, ch. 181, which is compiled as §§ 19-851 to 19-863, 19-864 to 19-866, and § 19-1512.

The 2013 amendment, by ch. 220, changed the designated scheme in the section from letters to numbers; added subsection (2) and redesignated the subsequent subsections; substituted "'Indigent person'" for "'Needy person'" and inserted "pursuant to section 19-854, Idaho Code" in subsection (4); and rewrote subsection (5).

19-852. Right to counsel of indigent person — Representation at all stages of criminal and commitment proceedings — Payment. — (1) An indigent person who is being detained by a law enforcement officer, who is confined or is the subject of hospitalization proceedings pursuant to section 18-212, 66-322, 66-326, 66-329, 66-404 or 66-406, Idaho Code, or who is under formal charge of having committed, or is being detained under a conviction of, a serious crime, is entitled:

(a) To be represented by an attorney to the same extent as a person having his own counsel is so entitled; and

(b) To be provided with the necessary services and facilities of representation including investigation and other preparation. The attorney, services and facilities and the court costs shall be provided at public expense to the extent that the person is, at the time the court determines indigency pursuant to section 19-854, Idaho Code, unable to provide for their payment.

(2) An indigent person who is entitled to be represented by an attorney under subsection (1) of this section is entitled:

(a) To be counseled and defended at all stages of the matter beginning with the earliest time when a person providing his own counsel would be entitled to be represented by an attorney and including revocation of probation;

(b) To be represented in any appeal;

(c) To be represented in any other post-conviction or post-commitment proceeding that the attorney or the indigent person considers appropriate, unless the court in which the proceeding is brought determines that it is not a proceeding that a reasonable person with adequate means would be willing to bring at his own expense and is therefore a frivolous proceeding.

(3) An indigent person's right to a benefit under subsection (1) or (2) of this section is unaffected by his having provided a similar benefit at his own expense, or by his having waived it, at an earlier stage.

History.

1967, ch. 181, § 2, p. 599; am. 1969 (2nd E.S.), ch. 10, § 2, p. 20; am. 1981, ch. 114, § 3, p. 169; am. 1982, ch. 59, § 3, p. 91; am. 2013, ch. 220, § 2, p. 515.

Compiler's Notes. The 2013 amendment, by ch. 220, changed the designation scheme throughout the section and updated internal references throughout the section in conformance with that change; substituted "indigent person" for "needy person" or similar language in the section heading and throughout the section; in subsection (1), deleted "18-214" following "18-212" and substituted "66-404 or 66-406" for "or 66-409" in the introductory paragraph and inserted "indigency pursuant to section 19-854, Idaho Code" in paragraph (b).

ANALYSIS

Denial of Counsel.

—Improper.

Trial court erred in summarily dismissing pro se inmate's application for post-conviction relief without first giving notice of perceived deficiencies in the pleading and appointing counsel to assist the inmate in developing the claims to present a viable basis for relief. Newman v. State, 140 Idaho 491, 95 P.3d 642 (Ct. App. 2004).

Effectiveness of Counsel.

Petitioner suffered no prejudice from his appellate counsel's failure to consult with him about filing a petition for review within the time period specified in Idaho Appellate Rule 118, because the time period for filing a petition for review is not jurisdictional. Pierce v. State, 142 Idaho 32, 121 P.3d 963 (2005).

No conflict existed that required the disqualification of the entire county public defender's office where defendant was represented by a public defender on a charge of murdering his wife and a new attorney with the public defender's office had previously represented defendant's mother-in-law in civil litigation directly related to his wife's death. State v. Severson, 147 Idaho 694, 215 P.3d 414 (2009).

Scientific Tests.

Where defendant was charged with possession of methamphetamine, district court did not err by denying his motion for DNA testing of syringe and re-testing of substance that the State's tests found to be methamphetamine. Defendant failed to make showing that his knowing possession of the methamphetamine and syringe was likely to be a significant issue

at trial such that additional testing at the public expense was required as a matter of due process. State v. Martin, 146 Idaho 357, 195 P.3d 716 (Ct. App. 2008).

19-853. Duty to notify accused or detained of right to counsel — Appointment of counsel. — (1) If a person who is being detained by a law enforcement officer, or who is confined or who is the subject of hospitalization proceedings pursuant to section 66-322, 66-326, 66-329, 66-404 or 66-406, Idaho Code, or who is under formal charge of having committed, or is being detained under a conviction of, a serious crime, is not represented by an attorney under conditions in which a person having his own counsel would be entitled to be so represented, the law enforcement officers concerned, upon commencement of detention, or the court, upon formal charge or hearing, as the case may be, shall:

(a) Clearly inform him of his right to counsel and of the right of an indigent person to be represented by an attorney at public expense; and

(b) If the person detained or charged does not have an attorney, notify the defending attorney or trial court concerned, as the case may be, that he is not so represented. As used in this subsection, the term "commencement of detention" includes the taking into custody of a probationer.

(2) Upon commencement of any later judicial proceeding relating to the same matter, including, but not limited to, preliminary hearing, arraignment, trial, any post-conviction proceeding or post-commitment proceeding, the presiding officer shall clearly inform the person so detained or charged of his right to counsel and of the right of an indigent person to be represented by an attorney at public expense. Provided, the appointment of an attorney at public expense in uniform post-conviction procedure act proceedings shall be in accordance with section 19-4904, Idaho Code.

(3) If a court determines that the person is entitled to be represented by an attorney at public expense, it shall promptly notify the defending attorney or assign an attorney, as the case may be.

(4) Upon notification by the court or assignment under this section, the defending attorney shall represent the person with respect to whom the notification or assignment is made.

History.

1967, ch. 181, § 3, p. 599; 1968 (2nd E.S.), ch. 10, § 3, p. 20; am. 1981, ch. 114, § 4, p. 169; am. 1982, ch. 59, § 4, p. 91; am. 1984, ch. 229, § 1, p. 548; am. 2001, ch. 160, § 1, p. 568; am. 2013, ch. 220, § 3, p. 515.

Compiler's Notes. The 2013 amendment, by ch. 220, changed the designation scheme throughout the section; substituted "66-404 or 66-406" for "or 66-409" in the introductory paragraph in subsection (1); substituted "indigent person" for "needy person" in paragraph (1)(a) and subsection (2); substituted "defending attorney" for "public defender" in paragraph (1)(b) and subsections (3) and (4); and deleted "or assigned attorney, as the case may be" preceding "shall represent" in subsection (4).

Right to Counsel.

Court erred by dismissing a postconviction motion and denying petitioner the appointment of counsel because, in deciding whether his pro se petition raised the possibility of a valid claim, the court should have considered whether the facts alleged were such that a reasonable person would be willing to retain counsel to conduct a further investigation into the claims; the district court failed to do that. Swader v. State, 143 Idaho 651, 152 P.3d 12 (2007).

19-854. Determination of indigency — Factors considered — Partial payment by accused — Reimbursement. — (1) The determi-

nation of whether a person covered under section 19-852, Idaho Code, is an indigent person shall be deferred until his first appearance in court or in a suit for payment or reimbursement under section 19-858, Idaho Code, whichever occurs earlier. Thereafter, the court concerned shall determine, with respect to each proceeding, whether he is an indigent person.

(2) The court concerned shall presume that the following persons are indigent persons unless such a determination is contrary to the interests of justice:

(a) Persons whose current monthly income does not exceed one hundred eighty-seven percent (187%) of the federal poverty guidelines issued annually by the federal department of health and human services;

(b) Persons who receive, or whose dependents receive, public assistance pursuant to title 56, Idaho Code, in the form of food assistance, health coverage, cash assistance or child care assistance; or

(c) Persons who are currently serving a sentence in a correctional facility or are being housed in a mental health facility.

(3) The court concerned may determine that persons other than those described in subsection (2) of this section are indigent persons. In determining whether a person is an indigent person and in determining the extent of his inability to pay, the court concerned may consider such factors as income, property owned, outstanding obligations, the number and ages of his dependents and the cost of bail.

(4) Release on bail does not necessarily prevent a person from being an indigent person.

(5) In each case, the person shall, subject to the penalties for perjury, certify in writing or by other record such material factors relating to his ability to pay as the court prescribes by rule. No information provided by a person pursuant to this subsection may be used as substantive evidence in any criminal or civil proceeding against the person except:

(a) For impeachment purposes;

(b) In a prosecution for perjury or contempt committed in providing the information; or

(c) In an attempt to enforce an obligation to reimburse the state for the cost of counsel.

(6) To the extent that a person covered under section 19-852, Idaho Code, is able to provide for an attorney, the other necessary services and facilities of representation, and court costs, the court may order him to provide for their payment.

(7) Upon conviction, notwithstanding the form of judgment or withheld judgment, plea of guilty or finding of guilt for any crime regardless of the original crime or number of counts, an indigent person who receives the services of an attorney provided by the county may be required by the court to reimburse the county for all or a portion of the cost of those services related to the conviction, plea of guilty or finding of guilt, unless the requirement would impose a manifest hardship on the indigent person. The current inability of the indigent person to pay the reimbursement shall not, in and of itself, restrict the court from ordering reimbursement.

History.
1967, ch. 181, § 4, p. 599; am. 2001, ch. 287, § 1, p. 1023; am. 2013, ch. 220, § 4, p. 515.

Compiler's Notes. The 2013 amendment, by ch. 220, changed the designation scheme throughout the section; substituted "indigency" for "need" in the section heading and "indigent person" for "needy person" throughout the section; added present subsection (a) and redesignated the subsequent subsections; added the first sentence and "and the cost of bail" at the end of the last sentence in subsection (3); added "by rule" at the end of the first sentence and added the second sentence, with its designating paragraphs, in subsection (5); and rewrote the first sentence in subsection (7), which formerly read: "A needy person who receives the services of an attorney provided by the county may be required by the court to reimburse the county for all or a portion of the cost of those services."

Cited in: State v. Korsen, 141 Idaho 445, 111 P.3d 130 (2005).

Reimbursement.
Just as a court is free to consider future earning capacity and future ability to pay when determining an appropriate restitution order, a court is free to do the same when it orders reimbursement of costs for legal services on appeal. State v. Cottrell, 152 Idaho 387, 271 P.3d 1243 (Ct. App. 2012).

19-855. Qualifications of counsel. — No person may be given the primary responsibility of representing an indigent person unless he is licensed to practice law in this state and is otherwise competent to counsel and defend a person charged with a crime.

History.
1967, ch. 181, § 5, p. 599; am. 2013, ch. 220, § 5, p. 515.

Compiler's Notes. The 2013 amendment, by ch. 220, substituted "an indigent person" for "a needy person."

19-856. Appointment of substitute attorney. [Repealed.]

Repealed by S.L. 2013, ch. 220, § 6, effective July 1, 2013.

History.
1967, ch. 181, § 6, p. 599.

19-857. Waiver of counsel — Consideration by court. — A person who has been appropriately informed of his right to counsel may waive any right provided by this act, if the court concerned, at the time of or after waiver, finds of record that he has acted with full awareness of his rights and of the consequences of a waiver and if the waiver is otherwise according to law. The court shall consider such factors as the person's age, education and familiarity with the English language and the complexity of the crime involved.

History.
1967, ch. 181, § 7, p. 599; am. 2013, ch. 220, § 7, p. 515.

Compiler's Notes. The term "this act" refers to S.L. 1967, ch. 181, which is compiled as §§ 19-851 to 19-863, 19-864 to 19-866, and § 19-1512.

The 2013 amendment, by ch. 220, deleted "in writing, or by other record" following "may waive" in the first sentence.

Analysis

Examination of defendant.
Knowing and intelligent waiver.

Examination of Defendant.
It was inconsequential whether a trial judge failed to find explicitly that defendant validly waived counsel because the judge implicitly found that counsel was validly waived. The judge deliberately extracted from defendant the necessary information to conclude that the waiver was valid, and then allowed defendant to proceed pro se. State v. Anderson, 144 Idaho 743, 170 P.3d 886 (2007).

Knowing and Intelligent Waiver.
In prosecution for sexual abuse charges, defendant's decision to discharge his counsel and re-open case to present dubious hypnosis

defense was knowing and voluntary. Although court did not issue complete warnings at time of waiver, defendant had been fully warned prior to trial of the risks of proceeding pro se, had no mental illness, had not been threatened or advised to proceed without a lawyer, and possessed sufficient education to understand the consequences of his decision. Although his decision may not have been wise, it was knowing and voluntary. State v. Dalrymple, 144 Idaho 628, 167 P.3d 765 (2007).

19-858. Reimbursement to county — When authorized. — (1) The prosecuting attorney of each county may, on behalf of the county, recover payment or reimbursement, as the case may be, from each person who has received legal assistance or another benefit under this act:

(a) To which he was not entitled;

(b) With respect to which he was not an indigent person when he received it; or

(c) With respect to which he has failed to make the certification required under section 19-854, Idaho Code, and for which he refuses to pay or reimburse. Suit must be brought within five (5) years after the date on which the aid was received.

(2) The prosecuting attorney of each county may, on behalf of the county, recover payment or reimbursement, as the case may be, from each person other than a person covered under subsection (1) of this section who has received legal assistance under this act and who, on the date on which suit is brought, is financially able to pay or reimburse the county for it without manifest hardship according to the standards of ability to pay applicable under sections 19-851, 19-852 and 19-854, Idaho Code, but refuses to do so. Suit must be brought within three (3) years after the date on which the benefit was received.

(3) Amounts recovered under this section shall be paid into the county general fund.

History.

1967, ch. 181, § 8, p. 599; am. 2013, ch. 220, § 8, p. 515.

Compiler's Notes. The term "this act" refers to S.L. 1967, ch. 181, which is compiled as §§ 19-851 to 19-863, 19-864 to 19-866, and § 19-1512.

The 2013 amendment, by ch. 220, changed the designation scheme throughout the section and updated a reference in subsection (2) in conformance with that change; substituted "indigent person" for "needy person" in paragraph (1)(b); and inserted "without manifest hardship" in the first sentence of subsection (2).

Legal Services.

Just as a court is free to consider future earning capacity and future ability to pay when determining an appropriate restitution order, a court is free to do the same when it orders reimbursement of costs for legal services on appeal. State v. Cottrell, 152 Idaho 387, 271 P.3d 1243 (Ct. App. 2012).

19-859. Public defender authorized — Court appointed attorneys — Joint county public defenders. — (1) The board of county commissioners of each county shall provide for the representation of indigent persons and other individuals who are entitled to be represented by an attorney at public expense. They shall provide this representation by:

(a) Establishing and maintaining an office of public defender;

(b) Arranging with the courts in the county to assign attorneys on an equitable basis through a systematic, coordinated plan; or

(c) Adopting a combination of these alternatives.

Until the board elects an alternative, it shall be considered as having elected the alternative provided in subsection (1)(b) of this section.

(2) If it elects to establish and maintain an office of public defender, the board of county commissioners of a county may join with the board of county commissioners of one (1) or more other counties to establish and maintain a joint office of public defender. In that case, the participating counties shall be treated for the purposes of this act as if they were one (1) county.

(3) If the board of county commissioners of a county elects to arrange with the courts in the county to assign attorneys, a court of the county may provide for advance assignment of attorneys, subject to later approval by it, to facilitate representation of matters arising before appearance in court.

History.
1967, ch. 181, § 9, p. 599; am. 2013, ch. 220, § 9, p. 515.

Compiler's Notes. The term "this act" refers to S.L. 1967, ch. 181, which is compiled as §§ 19-851 to 19-863, 19-864 to 19-866, and § 19-1512.

The 2013 amendment, by ch. 220, changed the designation scheme throughout the section and updated a reference in paragraph (1)(c) in conformance with that change; substituted "indigent persons and other individuals who are entitled to be represented by an attorney at public expense" for "needy persons who with respect to serious crimes are subject to proceedings in the county or are detained in the county by law enforcement officers" in the introductory paragraph in subsection (1); and deleted "of criminal jurisdiction" following "courts" in subsection (3).

19-860. Public defender — Term — Compensation — Appointment — Qualifications — Court appointed attorneys — Compensation. — (1) If the board of county commissioners of a county elects to establish and maintain an office of public defender and/or juvenile public defender, the board shall:

(a) Prescribe the qualifications of such public defender, his term of office, which may not be less than two (2) years, and his rate of annual compensation, and, if so desired by the board, a rate of compensation for extraordinary services not recurring on a regular basis. So far as is possible, the compensation paid to such public defender shall not be less than the compensation paid to the county prosecutor for that portion of his practice devoted to criminal law.

(b) Provide for the establishment, maintenance and support of his office. The board of county commissioners shall appoint a public defender and/or juvenile public defender from a panel of not more than five (5) and not fewer than three (3) persons, if that many are available, designated by a committee of lawyers appointed by the administrative judge of the judicial district encompassing the county or his designee. To be a candidate, a person must be licensed to practice law in this state and must be competent to counsel and defend a person charged with a crime. During his incumbency, such public defender may engage in the practice of civil law and criminal law other than in the discharge of the duties of his office, unless he is prohibited from doing so by the board of county commissioners.

(2) If a court before whom a person appears upon a formal charge assigns an attorney other than a public defender to represent an indigent person, the appropriate district court, upon application, shall prescribe a reasonable rate of compensation for his services and shall determine the direct

expenses necessary to representation for which he should be reimbursed. The county shall pay the attorney the amounts so prescribed. The attorney shall be compensated for his services with regard to the complexity of the issues, the time involved and other relevant considerations.

History.
1967, ch. 181, § 10, p. 599; am. 1968 (2nd E. S.), ch. 23, § 1, p. 45; am. 1988, ch. 342, § 1, p. 1019; am. 1998, ch. 72, § 1, p. 266; am. 2013, ch. 220, § 10, p. 515.

Compiler's Notes. The 2013 amendment, by ch. 220, changed the designation scheme throughout the section and substituted "an indigent person" for "a needy person" in the first sentence in subsection (2).

19-863. Defense expenses — Allocation in jointly established offices. — (1) Subject to section 19-861, Idaho Code, any direct expense, including the cost of a transcript that is necessarily incurred in representing an indigent person under this act, is a county charge against the county on behalf of which the service is performed.

(2) If two (2) or more counties jointly establish an office of public defender, the expenses not otherwise allocable among the participating counties under subsection (1) of this section shall be allocated, unless the counties otherwise agree, on the basis of population according to the most recent decennial census.

History.
1967, ch. 181, § 13, p. 599; am. 2013, ch. 220, § 11, p. 515.

Compiler's Notes. The 2013 amendment, by ch. 220, changed the designation scheme throughout the section and updated a reference in subsection (2) in conformance with that change; and substituted "an indigent person" for "a needy person" in the first sentence of subsection (1).

19-864. Records of defending attorneys — Annual report of defending attorneys. — (1) A defending attorney shall keep appropriate records respecting each person whom he represents under this act.

(2) Defending attorneys shall submit an annual report to the board of county commissioners and the appropriate administrative district judge showing the number of persons represented under this act, the crimes involved and the expenditures, totaled by kind, made in carrying out the responsibilities imposed by this act.

History.
1967, ch. 181, § 14, p. 599; am. 2013, ch. 220, § 12, p. 515.

Compiler's Notes. The term "this act" refers to S.L. 1967, ch. 181, which is compiled as §§ 19-851 to 19-863, 19-864 to 19-866, and § 19-1512.

The 2013 amendment, by ch. 220, rewrote the section to the extent that a detailed comparison is impracticable.

19-865. Application of act — State courts — Federal courts. — This act applies only to representation in the courts of this state, except that it does not prohibit a defending attorney from representing an indigent person in a federal court of the United States, if:

(1) The matter arises out of or is related to an action pending or recently pending in a court of criminal jurisdiction of the state; or

(2) Representation is under a plan of the United States District Court as

required by the criminal justice act of 1964, 18 U.S.C. 3006A, and is approved by the board of county commissioners.

History.
1967, ch. 181, § 15, p. 599; am. 2013, ch. 220, § 13, p. 515.

Compiler's Notes. The term "this act" refers to S.L. 1967, ch. 181, which is compiled as §§ 19-851 to 19-863, 19-864 to 19-866, and § 19-1512.

The 2013 amendment, by ch. 220, changed the designation scheme in the section; and in the introductory paragraph, substituted "defending attorney" for "public defender" and "an indigent person" for "a needy person."

19-869. Creation — Appointment — Qualifications — Term — Compensation. — (1) The office of state appellate public defender is hereby created in the department of self-governing agencies.

(2) The state appellate public defender shall be appointed by the governor, with the advice and consent of the senate.

(3) The state appellate public defender shall be an attorney licensed to practice law in the state of Idaho and shall have a minimum of five (5) years' experience as a practicing attorney. The governor may prescribe such further qualifications as he deems necessary for the position.

(4) The state appellate public defender shall serve for a term of four (4) years, during which term he may be removed only for good cause, and shall be compensated in an amount determined by the governor.

(5) The state appellate public defender may adopt policies or rules necessary to give effect to the purposes of this act.

History.
I.C., § 19-869, as added by 1998, ch. 389, § 4, p. 1190; am. 2011, ch. 8, § 1, p. 20; am. 2011, ch. 67, § 1, p. 142.

Compiler's Notes. This section was amended by two 2011 acts which appear to be identical and have been compiled together.

The 2011 amendments, by chs. 8 and 67, deleted "from a list of not less than two (2) nor more than four (4) qualified persons recommended by a committee consisting of the president of the Idaho state bar association, the chairman of the senate judiciary and rules committee and the chairman of the house judiciary, rules and administration committee and a citizen at large appointed by the governor. The chief justice of the Idaho supreme court, or her designee, shall be an ex officio member of the committee" from the end of subsection (2).

Section 2 of S.L. 2011, ch. 67 declared an emergency. Approved March 15, 2011.

CHAPTER 9

MODE OF PROSECUTION OF PUBLIC OFFENSES

19-901. Indictment or information.

Indictment or Information.
Informations are of equal dignity with indictments, subject to the limitations that a defendant may only be accused by information after commitment by a magistrate and that an information cannot be issued if the charge has been previously brought before, and ignored by, a grand jury. Warren v. Craven, 152 Idaho 327, 271 P.3d 725 (Ct. App. 2012).

CHAPTER 11

POWERS AND DUTIES OF GRAND JURY

19-1107. Sufficiency of evidence to warrant indictment.

ANALYSIS

Appellate review.
Prosecutorial misconduct.

Appellate Review.

When conducting a review of the propriety of the grand jury proceeding, an appellate court's inquiry is two-fold. First, the court must determine whether, independent of any inadmissible evidence, the grand jury received legally sufficient evidence to support a finding of probable cause. In making this determination, every legitimate inference that may be drawn from the evidence must be drawn in favor of the indictment. Second, even if such legally sufficient evidence was presented, the indictment must be dismissed if prosecutorial misconduct in submitting illegal evidence was so egregious as to be prejudicial. "Prejudicial effect" means the defendant would not have been indicted but for the misconduct. State v. Marsalis, 151 Idaho 872, 264 P.3d 979 (Ct. App. 2011).

Alleged defects in the grand jury process generally will not be reviewed on appeal after a defendant has been convicted in a fair trial on the merits. State v. Marsalis, 151 Idaho 872, 264 P.3d 979 (Ct. App. 2011).

Prosecutorial Misconduct.

There was no error in denying defendant's motion to dismiss an indictment for rape, where the grand jury was presented with abundant proper evidence to find probable cause to believe that intercourse occurred and that the victim was unconscious and/or incapable of resisting at the time, since she was intoxicated to the point of unconsciousness or had been given a drug, or a combination of both. Defendant had not shown that, "but for" alleged prosecutorial misconduct, he would not have been indicted. State v. Marsalis, 151 Idaho 872, 264 P.3d 979 (Ct. App. 2011).

19-1121. Self-incrimination — Right to counsel.

Prosecutor's Comment on Defendant's Silence.

Where federal habeas petitioner, an inmate convicted of first-degree murder and sentenced to death, conceded at trial that his decision to speak with a psychologist was voluntary, and there was no evidentiary support of the inmate's claim that the police promised him use immunity in exchange for agreeing to talk with the psychologist, there was no error in admitting that evidence at trial; the same was not quite as true of his silence at the special inquiry, which was arguably a judicial, rather than a police, proceeding because the distinction between the two was enough to suggest that the inmate's silence at the special inquiry may not have been relevant to his claim of cooperation with the police, and that it was arguably improper to comment upon the exercise of his right to remain silent as to certain questions. However, in the context of all of the evidence in the case, including the myriad of other inconsistencies in his stories, any error was harmless as far as this habeas corpus proceeding was concerned. Leavitt v. Arave, 383 F.3d 809 (9th Cir. 2004), cert. denied, 545 U.S. 1105, 125 S. Ct. 2540, 162 L. Ed. 2d 277 (2005).

CHAPTER 12

PRESENTMENT AND PROCEEDINGS THEREON

SECTION.

19-1201. Presentment, how found.

Indictment or Information.

Informations are of equal dignity with indictments, subject to the limitations that a defendant may only be accused by information after commitment by a magistrate and that an information cannot be issued if the charge has been previously brought before, and ignored by, a grand jury. Warren v. Craven, 152 Idaho 327, 271 P.3d 725 (Ct. App. 2012).

19-1205. Form of bench warrant. — The bench warrant, upon presentment, must be substantially in the following form:

County of ..... The state of Idaho to any sheriff, constable, marshal or policeman in this state: A presentment having been made on the .... day of ...., ... to the district court of the county of ...., charging C.D. with the crime of ...., (designating it generally) you are therefore commanded forthwith to arrest the above named C.D., and take him before E.F., a magistrate of this county, or in case of his absence or inability to act, before the nearest and most accessible magistrate in this county. Given under my hand with the seal of said court affixed, this .... day of ...., ...

By order of the court.

(Seal.) G.H., Clerk.

History.

Cr. Prac. 1864, § 222, p. 239; R.S., R.C., & C.L., § 7651; C.S., § 8806; I.C.A., § 19-1105; am. 2007, ch. 90, § 10, p. 246.

Compiler's Notes. The 2007 amendment, by ch. 90, deleted the references to the twentieth century from the date in the form.

CHAPTER 13

INFORMATION AND PROCEEDINGS THEREON

19-1301. Power and jurisdiction of courts.

Construction.

Informations are of equal dignity with indictments, subject to the limitations that a defendant may only be accused by information after commitment by a magistrate and that an information cannot be issued if the charge has been previously brought before, and ignored by, a grand jury. Warren v. Craven, 152 Idaho 327, 271 P.3d 725 (Ct. App. 2012).

19-1309. Discovery and inspection.

A.L.R. Failure of state prosecutor to disclose exculpatory physical evidence as violating due process — Weapons. 53 A.L.R.6th 81.

Failure of state prosecutor to disclose exculpatory physical evidence as violating due process — Personal items other than weapons. 55 A.L.R.6th 391.

CHAPTER 14

INDICTMENT

19-1401. Indictment, how found.

Amendment.

Defendant's conviction for sexual abuse of a child under 16 years of age was void, because the prosecuting attorney had no authority to issue an amended indictment for a crime that was not charged in the original indictment and that was not an included offense of the originally-charged crime of lewd conduct with a child under 16 years of age; the amended indictment was a nullity, as the new charge required "the concurrence of at least twelve (12) grand jurors." State v. Flegel, 151 Idaho 525, 261 P.3d 519 (2011).

19-1409. Requirements of indictment.

Cited in: State v. Severson, 147 Idaho 694, 215 P.3d 414 (2009).

19-1411. Certainty required of indictment.

Cited in: State v. Severson, 147 Idaho 694, 215 P.3d 414 (2009).

19-1418. Sufficiency of indictment.

Cited in: State v. Severson, 147 Idaho 694, 215 P.3d 414 (2009).

19-1420. Amendment of indictment.

Analysis

Amendment injecting new issues.
In general.
No prejudicial effect.

Amendment Injecting New Issues.

Defendant's conviction for sexual abuse of a child under 16 years of age was void, because the prosecuting attorney had no authority to issue an amended indictment for a crime that was not charged in the original indictment and that was not an included offense of the originally-charged crime of lewd conduct with a child under 16 years of age; the amended indictment was a nullity, as the new charge required a new indictment from the grand jury. State v. Flegel, 151 Idaho 525, 261 P.3d 519 (2011).

In General.

The state can amend an information, without requiring a new probable cause determination, where the amended information does not add to or change the offense with which the defendant is charged, but merely adds an element necessary to charge the offense correctly. State v. Stewart, 149 Idaho 383, 234 P.3d 707 (2010).

No Prejudicial Effect.

Indictment charging defendant with murdering his wife by giving her an overdose of drugs or by suffocating her was not impermissibly amended to allege murder by overdose or suffocation because the amendment did not charge defendant with a new offense, but merely alleged an alternative way that defendant might have committed the crime. Further, the amendment did not prejudice defendant's substantial rights because it was made nearly one whole year before trial and, thus, gave defendant more than adequate time to prepare his defense relating to the allegation of murder by suffocation. The amendment did not subject defendant to double jeopardy because, if the jury had convicted or acquitted defendant under the original indictment, he could not later be tried on the amended indictment. State v. Severson, 147 Idaho 694, 215 P.3d 414 (2009).

19-1430. Distinction between accessories and principals abolished.

Cited in: State v. Shackelford, 150 Idaho 355, 247 P.3d 582 (2010).

Analysis

Construction with other law.
Evidence.
Instructions.

Construction with Other Law.

This section and Idaho Crim. R. 7 can be reasonably interpreted so that there is no conflict between them. Rule 7(b) requires the charging document be a plain, concise and definite written statement of the essential facts constituting the offense charged. This section provides that, in the case of aiding and abetting, the "essential facts" are only those facts that are required in charging the principal. State v. Johnson, 145 Idaho 970, 188 P.3d 912, cert. denied, 555 U.S. 1053, 129 S. Ct. 638, 172 L. Ed. 2d 623 (2008).

Evidence.

Defendant's conviction for aggravated assault was upheld, even though his lone kick to a victim's backside while the victim was being bound with duct tape was not likely to produce great bodily harm, because the actions of his group as a whole were sufficient for a reasonable jury to find a likelihood of great

bodily harm; there is no legal distinction between the person who directly commits a criminal act and a person who aids and abets in its commission. State v. Horejs, 143 Idaho 260, 141 P.3d 1129 (Ct. App. 2006).

Evidence was sufficient to convict defendant of first-degree murder under an aiding and abetting theory, because there was evidence that: (1) defendant and his accomplice were in the house lying in wait for the victim; (2) two knives were used in the murder, both of which potentially caused the victim's death; (3) video footage taken immediately before and after the murder showed defendant's preparation for and involvement in the murder. It was not necessary for the state to prove that defendant inflicted the fatal wound. State v. Adamcik, 152 Idaho 445, 272 P.3d 417, cert. denied, — U.S. —, 133 S. Ct. 141, 184 L. Ed. 2d 68 (2012).

Instructions.

Jury instruction on aiding and abetting did not constitute an impermissible variance or a constructive amendment of the charging document because Idaho has abolished the distinction between principals and aiders and abettors, and it is well established in Idaho that it is unnecessary to charge a defendant with aiding and abetting. State v. Johnson, 145 Idaho 970, 188 P.3d 912, cert. denied, 555 U.S. 1053, 129 S. Ct. 638, 172 L. Ed. 2d 623 (2008).

District court did not err by failing to give a unanimity instruction on aiding and abetting because aiding and abetting was not a separate offense from the substantive crime of murder. State v. Johnson, 145 Idaho 970, 188 P.3d 912, cert. denied, 555 U.S. 1053, 129 S. Ct. 638, 172 L. Ed. 2d 623 (2008).

CHAPTER 17

PLEADINGS BY DEFENDANT

19-1712. Kinds of pleas.

Nolo Contendere Plea.

Magistrate properly rejected a nolo contendere plea entered by a defendant charged with vehicular manslaughter, as such pleas are no longer allowed in criminal proceedings under Idaho law. State v. Salisbury, 143 Idaho 476, 147 P.3d 108 (Ct. App. 2006).

19-1713. Form of pleas.

Analysis

Nolo contendere plea.
Voluntariness of plea.

Nolo Contendere Plea.

Magistrate properly rejected a nolo contendere plea entered by a defendant charged with vehicular manslaughter, as such pleas are no longer allowed in criminal proceedings under Idaho law. State v. Salisbury, 143 Idaho 476, 147 P.3d 108 (Ct. App. 2006).

Voluntariness of Plea.

Trial transcript demonstrated that defendant understood the nature of the charges, understood the purpose of the hearing, understood that he was admitting that the charges were true and entering a plea of guilty, and understood the consequences of doing so; defendant did not demonstrate an issue of material fact regarding his actual entry of a guilty plea. Workman v. State, 144 Idaho 518, 164 P.3d 798 (2007).

19-1714. Plea of guilty.

A.L.R. Court's duty to advise sex offender as to sex offender registration consequences or other restrictions arising from plea of guilty, or to determine that offender is advised thereof. 41 A.L.R.6th 141.

CHAPTER 19

MODE OF TRIAL — FORMATION OF TRIAL JURY — POSTPONEMENT OF TRIAL

19-1902. Trial by jury.

A.L.R. Validity, construction, and application of right of defendant in state criminal proceeding to jury composed solely of United States citizens. 36 A.L.R.6th 189.

19-1903. Presence of defendant.

A.L.R. Sufficiency of showing defendant's "voluntary absence" from trial for purposes of state criminal procedure rules or statutes authorizing continuation of trial notwithstanding such absence. 19 A.L.R.6th 697.

CHAPTER 20

CHALLENGING THE JURY

19-2005. Challenge to panel — Grounds.

A.L.R. Validity, construction, and application of right of defendant in state criminal proceeding to jury composed solely of United States citizens. 36 A.L.R.6th 189.

19-2018. General causes of challenge.

A.L.R. Validity, construction, and application of right of defendant in state criminal proceeding to jury composed solely of United States citizens. 36 A.L.R.6th 189.

19-2019. Particular causes of challenge.

Challenge for Cause.

Trial court improperly denied defendant's challenge for cause of juror who stated during voir dire that he was biased towards believing the testimony of a police officer over that of a defendant, and who could make no unequivocal assurance that he would set aside this bias and render an impartial verdict based solely on the facts of the case. State v. Hauser, 143 Idaho 603, 150 P.3d 296 (Ct. App. 2006).

19-2020. Grounds of challenge for implied bias.

Grounds of Challenge.

Trial court improperly denied defendant's challenge for cause of juror who stated during voir dire that he was biased towards believing the testimony of a police officer over that of a defendant, and who could make no unequivocal assurance that he would set aside this bias and render an impartial verdict based solely on the facts of the case. State v. Hauser, 143 Idaho 603, 150 P.3d 296 (Ct. App. 2006).

CHAPTER 21

TRIAL

SECTION.

19-2106. Trial of joint defendants.

A.L.R. Propriety of use of multiple juries at joint trial of multiple defendants in state criminal prosecution. 41 A.L.R.6th 295.

19-2117. Testimony of accomplice — Corroboration.

Cited in: State v. Chacon, 145 Idaho 814, 186 P.3d 670 (Ct. App. 2008).

Analysis

Ineffective assistance of counsel.
Purpose.
Sufficiency of corroboration.

Ineffective Assistance of Counsel.

Habeas petition should have been granted for defendant convicted of murder on the basis of ineffective assistance of counsel, where counsel's requested jury instruction failed to mention the requirement of corroboration of accomplice testimony. Defendant had been convicted in great part on the testimony of his accomplice brother, and counsel's failure to request an appropriate instruction made it easier for the jury to convict him. Lankford v. Arave, 468 F.3d 578 (9th Cir. 2006), cert. denied, 552 U.S. 943, 128 S. Ct. 206, 169 L. Ed. 2d 246 (2007).

Purpose.

The statutory corroboration requirement is intended to protect against the danger that an accomplice may wholly fabricate testimony, incriminating an innocent defendant in order to win more favorable treatment for the accomplice. State v. Pecor, 132 Idaho 359, 972 P.2d 737 (Ct. App. 1998); State v. Stone, 147 Idaho 890, 216 P.3d 648 (Ct. App. 2009).

Sufficiency of Corroboration.

Corroborating evidence must connect the defendant to the crime, but need not be sufficient, in itself, to convict the defendant, and need not corroborate the testimony of an accomplice in every detail. State v. Pecor, 132 Idaho 359, 972 P.2d 737 (Ct. App. 1998); State v. Stone, 147 Idaho 890, 216 P.3d 648 (Ct. App. 2009).

Idaho appellate courts hold that corroborating evidence need not be sufficient to sustain a conviction on its own, nor must the evidence corroborate every detail of the accomplice's testimony since it is sufficient if it tends to connect the defendant to the crime independently of the accomplice's testimony. State v. Hill, 140 Idaho 625, 97 P.3d 1014 (Ct. App. 2004).

Evidence corroborating an accomplice's testimony may be slight, need only go to one material fact, and may be entirely circumstantial. State v. Hill, 140 Idaho 625, 97 P.3d 1014 (Ct. App. 2004).

In defendant's criminal prosecution for forgery, the accomplice's testimony that she and defendant drove to the bank, cashed the decedent's social security check, and shared the proceeds, was properly admitted since the accomplice's testimony was corroborated by a bank employee; furthermore, the check itself was in evidence and bore defendant's endorsement. State v. Hill, 140 Idaho 625, 97 P.3d 1014 (Ct. App. 2004).

State presented sufficient evidence to corroborate a co-conspirator's testimony implicating defendant in a conspiracy to traffic in cocaine and heroin. There was a large and significant body of evidence, including defendant's phone records, evidence collected from controlled buys, search warrants, observations of defendant's activities, and a search of his vehicle, that corroborated the co-conspirator's testimony and connected defendant to active participation in the conspiracy. State v. Rolon, 146 Idaho 684, 201 P.3d 657 (Ct. App. 2008).

Defendant's unsolicited knowledge of the names of the individuals involved in a series of crimes, and of the motive for the crimes, could reasonably be inferred to indicate more involvement than a passive recipient of news and served as sufficient corroborative evidence to sustain a guilty verdict. State v. Stone, 147 Idaho 890, 216 P.3d 648 (Ct. App. 2009).

During trial for aiding and abetting in two first-degree murders, the court properly admitted three photographs of the victims because they were relevant to the corroboration of the coconspirators' testimonies of the fatal injuries and how they attempted to dispose of the bodies. State v. Reid, 151 Idaho 80, 253 P.3d 754 (Ct. App. 2011).

19-2126. Custody of jury during trial. — The jury sworn to try any felony may, at any time during the trial, and after the submission of the cause, in the discretion of the court, be permitted to separate, or they may be kept together, in the charge of a proper officer. Provided however, that in

causes where the defendant has been charged with first-degree murder, and the prosecuting attorney has filed a notice of intent to seek the death penalty pursuant to section 18-4004A, Idaho Code, and such notice has not been withdrawn, the jury may not be permitted to separate after submission of the cause and completion of the special sentencing proceeding held pursuant to section 19-2515 or 19-2515A, Idaho Code. Before permitting the jury to separate after the cause has been submitted, the court shall permit counsel to place objections, if any, on the record outside the presence of the jury. In case the court orders the jury to be kept together the county must provide a suitable place for the board and lodging of the jury, at the expense of the county, and when first given custody of the jury the officer or bailiff must be sworn to keep the jury together during each recess and adjournment during the trial; to allow no person to speak to or communicate with them, or any of them, nor to do so himself, on any subject connected with the trial, and to return them into court as ordered by the court.

History.

Cr. Prac. 1874, § 377, p. 418; am. 1880, p. 227, § 4; R.S., R.C., & C.L., § 7880; C.S., § 8966; am. 1929, ch. 14, § 1, p. 14; I.C.A., § 19-2026; am. 1981, ch. 229, § 1, p. 465; am. 1987, ch. 145, § 1, p. 289; am. 2002, ch. 94, § 11, p. 256; am. 2003, ch. 19, § 3, p. 71; am. 2003, ch. 136, § 2, p. 394; am. 2008, ch. 22, § 1, p. 35.

Compiler's Notes. The 2008 amendment, by ch. 22, inserted "and the prosecuting attorney has filed a notice of intent to seek the death penalty pursuant to section 18-4004A, Idaho Code, and such notice has not been withdrawn" in the second sentence.

19-2132. Instructions to jury — Requests — Instructions on included offenses.

Cited in: State v. McNair, 141 Idaho 263, 108 P.3d 410 (Ct. App. 2005); State v. Macias, 142 Idaho 509, 129 P.3d 1258 (Ct. App. 2005); State v. Mubita, 145 Idaho 925, 188 P.3d 867 (2008).

Analysis

In General.

A trial court must deliver instructions on the rules of law that are material to the determination of the defendant's guilt or innocence. State v. Severson, 147 Idaho 694, 215 P.3d 414 (2009).

Instructions will only be given if they are correct and pertinent. A proposed instruction is not "correct and pertinent" if it is: (1) an erroneous statement of the law; (2) adequately covered by other instructions; or (3) not supported by the facts of the case. State v. Severson, 147 Idaho 694, 215 P.3d 414 (2009).

Instructions Regarding Reaching of Verdict.

Where defendant was charged with murdering his wife by giving her an overdose of drugs or by suffocating her, the trial court was not required to instruct the jury that it must unanimously agree on the means by which defendant killed his wife. Defendant was charged with the single act of murdering his wife, and the evidence presented at trial did not suggest that he engaged in the conduct giving rise to the offense on more than one occasion. Although the evidence showed that defendant could have murdered his wife by either overdosing her or suffocating her, it did not indicate that separate incidents occurred. Absent evidence of more than one instance in which defendant engaged in the charged conduct, the jury was not required to unanimously agree on the facts giving rise to the offense. State v. Severson, 147 Idaho 694, 215 P.3d 414 (2009).

Necessity of Request.

—Failure of Defendant to Request.

Defendant could not claim an error on appeal for a defense theory that did not constitute a necessary matter of law and for which

no instruction was requested. Trial court did not err in failing sua sponte to instruct the jury on the inherent dangers of eyewitness identification. State v. Pearce, 146 Idaho 241, 192 P.3d 1065 (2008).

—Refusal to Give.

The jury instruction given adequately covered the subject matter of the defense's proposed instruction so that there was no error in declining defendant's proposed jury instruction regarding eyewitness identification. State v. Wright, 147 Idaho 150, 206 P.3d 856 (Ct. App. 2009).

Spoliation of Evidence.

Defendant's request for a jury instruction on spoliation of evidence was properly denied because there was no due process violation in the destruction of the evidence; defendant admitted to helping manufacture methamphetamine, and the destruction of the lab equipment was done for safety purposes pursuant to departmental policy. State v. Edney, 145 Idaho 694, 183 P.3d 782 (Ct. App. 2008).

CHAPTER 22

CONDUCT OF JURY

19-2204. Return of jury for information.

Ex Parte Communication.

Magistrate's instruction, insofar as it directed the jury that provocation was not a defense to battery, was a correct statement of law; however, the magistrate's statements, which informed the jury that it could consider whether any provocation existed, were superfluous and inconsistent with its instruction. Nevertheless, because that information allowed the jury to consider whether provocation existed despite such information being irrelevant to whether defendant committed domestic battery, the magistrate's error benefited defendant and could not have caused him any harm; therefore, the magistrate's ex parte instruction to the jury was harmless beyond a reasonable doubt and did not violate defendant's rights under the Confrontation Clause or the Due Process Clause. State v. Walsh, 141 Idaho 870, 119 P.3d 645 (Ct. App. 2005).

CHAPTER 23

VERDICT

19-2307. Special verdict, how rendered.

Instructions.

After a jury told the trial court that it could not agree on a number of predicate acts in the racketeering charge, the instructions to note on a special verdict form where there was no agreement comported with Idaho law and with defense counsel's request. Hoyle v. Ada County, 501 F.3d 1053 (9th Cir. 2007), cert. denied, 170 L. Ed. 2d 297, 128 S. Ct. 1482 (2008).

19-2316. Polling the jury.

Cited in: State v. Severson, 147 Idaho 694, 215 P.3d 414 (2009). =alr Interrogation or poll of jurors, during criminal trial, as to whether they were exposed to media publicity pertaining to alleged crime or trial. 55 A.L.R.6th 157.

19-2317. Recording verdict.

Cited in: State v. Severson, 147 Idaho 694, 215 P.3d 414 (2009).

CHAPTER 24

EXCEPTIONS — NEW TRIAL — ARREST OF JUDGMENT

19-2406. Grounds for new trial.

Cited in: State v. Nevarez, 142 Idaho 616, 130 P.3d 1154 (Ct. App. 2005).

Analysis

Discretion of court.
Erroneous exclusion of expert witness.
False testimony.
Harmless error.
Misconduct of juror.
Newly-discovered evidence.
Waiver of objection to misconduct.

Discretion of Court.

An appellate court reviews a denial of a motion for new trial for an abuse of discretion. That discretion is not abused unless a new trial is granted for a reason that is not delineated in the code or unless the decision to grant or deny a new trial is contrary to the interest of justice. State v. Almaraz, — Idaho —, — P.3d —, 2012 Ida. LEXIS 145 (May 31, 2012).

Erroneous Exclusion of Expert Witness.

Defendant was entitled to a new trial based on the erroneous exclusion of testimony by an expert in law enforcement interview techniques, and because the expert's evidence was relevant to challenge the reliability of the victims' testimony about instances of sexual abuse; the error was not harmless. State v. Critchfield, — Idaho —, 290 P.3d 1272 (Ct. App. 2012).

False Testimony.

After trial, evidence came to light that the state's sole rebuttal witness, a state police officer, provided false testimony at trial that went to the sole theory of defense. His testimony was completely inconsistent with his testimony in another case, and with the training materials that he represented supported his opinion. State v. Ellington, 151 Idaho 53, 253 P.3d 727 (2011).

Harmless Error.

Trial court properly denied arson defendant's motion for a new trial. Even though prosecuting attorney's attempt to elicit investigating officer's opinion as to defendant's veracity during police interrogation was clearly misconduct, the misconduct was harmless, due to overwhelming evidence of defendant's guilt. State v. Christiansen, 144 Idaho 463, 163 P.3d 1175 (2007), overruled on other grounds, State v. Perry, 245 P.3d 961 (2010).

Misconduct of Juror.

Motion for a new trial was properly denied because defendant failed to raise the issue of juror inattentiveness or sleeping during the trial where several affidavits showed that he was aware of such; moreover, another affidavit from a spectator did not rise to the level of requiring a new trial based on general allegations that a juror was nodding off and appeared to not be paying attention. State v. Bolen, 143 Idaho 437, 146 P.3d 703 (Ct. App. 2006).

Defendant was not entitled to a new trial under this section, based on three jurors' complaints that they had difficulties hearing defense counsel during the trial. Defendant failed to show juror misconduct by clear and convincing evidence, because the jurors testified that they could hear every question asked of a witness and all of the answers. State v. Strange, 147 Idaho 686, 214 P.3d 672 (Ct. App. 2009).

Newly-Discovered Evidence.

Trial court properly denied defendant's motion for new trial when defendant's brother, after trial, decided to waive his privilege against self-incrimination to testify that he was driving a vehicle that eluded a police officer; witness's belated offer to testify was not newly discovered evidence. State v. Eddins, 142 Idaho 423, 128 P.3d 960 (Ct. App. 2006).

Defendant was properly denied a new trial on his claim that a state expert committed perjury by lying about his qualifications because the verdict would not have been different if the expert had not testified at all concerning the force required to cause the child victim's injuries and death. The evidence was overwhelmingly inconsistent with defendant's theory that the victim's fatal injury was caused by his four-year-old sister's jumping or falling onto him; the theory did not explain how the multitude of fresh injuries would have been inflicted all over the victim's body in a span of a few minutes while defendant was in the next room but heard no fight or other commotion between the children. State v. Griffith, 144 Idaho 356, 161 P.3d 675 (Ct. App. 2007).

In a case involving lewd conduct with a minor, defendant's motion for a new trial

should have been granted based on newly discovered evidence because an alibi witness had not been contacted, the testimony was material to impeachment and an alibi, diligent efforts were used to secure the witness, and it would have likely caused an acquittal based on other contradictory evidence. The testimony contradicting the victim's story was important due to the fact that the victim's own mother contradicted the victim's testimony, there was evidence calling the victim's general veracity into question, and the jury apparently distrusted most of the victim's story. State v. Hayes, 144 Idaho 574, 165 P.3d 288 (Ct. App. 2007).

In a murder case, the court did not err by denying defendant's motion for a new trial based on newly discovered evidence that the child might have died from medication side effects because the court recognized that the jury was presented with a question as to what caused the massive and fatal skull fracture the child suffered and was presented with two alternate theories. That one theory might have had additional support after trial did not mean that the supporting evidence was material; the jury rejected that theory and determined that defendant's actions caused the injuries. State v. Stevens, 146 Idaho 139, 191 P.3d 217 (2008).

In a murder case, the court did not err by denying defendant's motion for a new trial based on newly discovered evidence regarding the removal of the child's eyes because substantial and competent evidence supported a conclusion that the primary evidence that the child's eyes were removed after embalming — the mortuary embalming report — was available before trial. Defendant was aware the State would use expert witness testimony about injuries to the child's eyes to support its theory that defendant killed the child during a battery. State v. Stevens, 146 Idaho 139, 191 P.3d 217 (2008).

Waiver of Objection to Misconduct.

Trial court did not err by denying defendant's motion for a new trial on the ground that the prosecuting attorney offered evidence that defendant had exercised his Fourth Amendment right by refusing consent to a search of his business following a fire because defendant did not object to the questioning, and, therefore, the trial court was not asked to rule on the admissibility of the testimony. State v. Christiansen, 144 Idaho 463, 163 P.3d 1175 (2007), overruled on other grounds, State v. Perry, 245 P.3d 961 (2010).

Idaho Law Review. Clarity and Balance: Appellate Review of Harmless Error, Fundamental Error, and Prosecutorial Misconduct After *State v. Perry*, Case Note. 48 Idaho L. Rev. 85 (2011).

A.L.R. DNA evidence as newly discovered evidence which will warrant grant of new trial or other postconviction relief in criminal case. 125 A.L.R.5th 497.

Justification and correction of remarks or acts of state trial judge criticizing, rebuking, or punishing defense counsel in criminal case as otherwise requiring new trial or reversal. 54 A.L.R.6th 429.

Claims of ineffective assistance of counsel in death penalty proceedings — United States supreme court cases. 31 A.L.R. Fed. 2d 1.

Adequacy of defense counsel's representation of criminal client regarding entrapment defense — Federal cases. 42 A.L.R. Fed. 2d 145.

CHAPTER 25

JUDGMENT

SECTION.

19-2507. Form of warrant. — The bench warrant must be substantially in the following form:

County of .....

The state of Idaho, to any sheriff, constable, marshal or policeman in this state:

A.B., having been on the .... day of ...., ... duly convicted in the district court of the .... judicial district of the state of Idaho, in and for the county of ...., of the crime of .... (designating it generally), you are therefore commanded forthwith to arrest the above named A.B. and bring him before that court for judgment; or if the court has adjourned for the term, that you deliver him into the custody of the sheriff of the county of .....

Given under my hand, with the seal of said court affixed, this .... day of ...., ...

By order of the court.

(Seal) E.F., Clerk.

History.

Cr. Prac. 1864, § 440, p. 266; R.S., R.C., & C.L., § 7986; C.S., § 9029; I.C.A., § 19-2407; am. 2007, ch. 90, § 11, p. 246.

Compiler's Notes. The 2007 amendment, by ch. 90, deleted the references to the twentieth century from the dates in the form.

19-2513. Unified sentence.

Cited in: State v. Stover, 140 Idaho 927, 104 P.3d 969 (2005); Burghart v. Carlin, 151 Idaho 730, 264 P.3d 71 (Ct. App. 2011).

Analysis

Due process.
Excessive sentence.
Persistent violators.

Due Process.

There is no liberty interest in parole arising from this section. Stanley v. Paul, 773 F. Supp. 2d 926 (D. Idaho 2011).

Excessive Sentence.

In a case where defendant had taken hundreds of sexually explicit photographs of three female children, ranging in age from three to 13 years old, and sent many of the photographs to other men via the Internet in exchange for sexual photos of those men's children, his unified life sentence with a 30-year determinate term was not excessive, given the depravity of the conduct and the sheer quantity of photographs involved. State v. Bowcut, 140 Idaho 620, 97 P.3d 487 (Ct. App. 2004).

Persistent Violators.

Although the jury found defendant to be a persistent violator subject to a sentence enhancement under § 19-2514 because of his three prior felony DUI convictions, he was required to serve only a unified sentence of at least five years, which could, in the district court's discretion, be suspended pursuant to § 19-2601. The legislature has not exercised its authority, under Idaho Const., Art. V, § 13, to preclude the § 19-2601 alternative sentencing options, and this section has not implicitly amended § 19-2514 to mandate a minimum fixed sentence. State v. Toyne, 151 Idaho 779, 264 P.3d 418 (Ct. App. 2011).

A.L.R. Construction and application of United States Sentencing Guideline § 2A2.1(b)(1), 18 U.S.C.A., providing enhancement for attempted murder or assault with intent to commit murder dependent upon nature or degree of injury. 30 A.L.R. Fed. 2d 385.

Construction and application of U.S.S.G. § 5G1.3(b), requiring federal sentence to run concurrently to undischarged state sentence when state sentence has been fully taken into account in determining offense level for federal offense — Particular events preceding federal sentence and sentencing credit. 32 A.L.R. Fed. 2d 191.

Construction and application of "official victim" sentencing enhancement of U.S.S.G. § 3A1.2(c), concerning law enforcement officers and prison officials. 32 A.L.R. Fed. 2d 371.

Construction and application of U.S.S.G. § 3B1.1(s), providing sentencing enhancement for organizer or leader of criminal activity — Fraud offenses. 32 A.L.R. Fed. 2d 445.

Downward adjustment for acceptance of responsibility under U.S.S.G. § 3E1.1, 18 USCS — Fraud offenses. 33 A.L.R. Fed. 2d 477.

Construction and application of U.S.S.G. § 5H1.3, concerning mental and emotional conditions as ground for sentencing departure. 34 A.L.R. Fed. 2d 457.

Construction and application of U.S.S.G. § 3B1.1(b), providing sentencing enhancement for manager or supervisor of criminal activity — Drug offenses — Cocaine. 35 A.L.R. Fed. 2d 467.

Validity, construction, and application of U.S.S.G. § 5K2.8, providing for upward sentence departure for extreme conduct. 36 A.L.R. Fed. 2d 95.

Construction and application of U.S.S.G. § 2X1.1, providing sentencing guideline for conspiracy not covered by specific offense guideline. 37 A.L.R. Fed. 2d 449.

Construction and application of U.S.S.G., § 3B1.1(a), 18 USCS, providing sentencing enhancement for organizer or leader of criminal activity — Drug offenses. 43 A.L.R. Fed. 2d 365.

19-2514. Persistent violator — Sentence on third conviction for felony.

Cited in: State v. Turney, 147 Idaho 690, 214 P.3d 1169 (Ct. App. 2009); State v. Rossignol, 147 Idaho 818, 215 P.3d 538 (Ct. App. 2009); State v. Beavers, 152 Idaho 180, 268 P.3d 1 (Ct. App. 2010); State v. Mendoza, 151 Idaho 623, 262 P.3d 266 (Ct. App. 2011).

ANALYSIS

Bills of attainder.
Enhancement.
Equal protection.
In general.
Persistent violator charge proper.
Previous felony convictions.
Proof.

Bills of Attainder.

Persistent violator enhancement statute was not an illegal bill of attainder because it did not single out a specific group or individual, it did not impose punishment, and judicial protections were a required prerequisite to the imposition of an enhanced sentence pursuant to its terms. State v. Haggard, 146 Idaho 37, 190 P.3d 193 (Ct. App. 2008).

Enhancement.

A trial court has subject matter jurisdiction to sentence a defendant as a persistent violator under this section, even though the information did not include the enhancement. State v. Miller, 151 Idaho 828, 264 P.3d 935 (2011).

Equal Protection.

Persistent violator enhancement statute did not violate the equal protection clause because there was no discernible classification of persons convicted of grand theft, when grand theft did not provide for alternative sentencing; defendant had a prior conviction for grand theft and a grand theft conviction was always a felony, therefore, all persons convicted of grand theft in Idaho would have acquired one felony for enhancement purposes. State v. Haggard, 146 Idaho 37, 190 P.3d 193 (Ct. App. 2008).

In General.

Although the jury found defendant to be a persistent violator subject to a sentence enhancement under this section, because of his three prior felony DUI convictions, he was required to serve only a unified sentence of at least five years, which could, in the district court's discretion, be suspended pursuant to § 19-2601. The legislature has not exercised its authority under Idaho Const., Art. V, § 13 to preclude the § 19-2601 alternative sentencing options, and § 19-2513 has not implicitly amended this section to mandate a minimum fixed sentence. State v. Toyne, 151 Idaho 779, 264 P.3d 418 (Ct. App. 2011).

Persistent Violator Charge Proper.

An enhanced sentence was proper based on defendant's status as a persistent violator where the state presented testimony by defendant's parole officer, who testified that defendant was being supervised for two previous felony convictions, and submitted authenticated photocopies of certified copies of defendant's prior ten felony convictions from the records kept by the state department of corrections. State v. Marsh, — Idaho —, 283 P.3d 107 (Ct. App. 2011).

Previous Felony Convictions.

Trial court erred in sentencing defendant as a persistent violator; there was insufficient evidence to establish that defendant's Oregon third degree assault conviction was for a felony because, although the indictment charged defendant with first degree assault and identified it as a felony, the indictment was for a different offense than that for which defendant was ultimately convicted. The record plainly demonstrated that the Oregon judgment did not specify whether third degree assault was a felony; and no other evidence in the record answered that question. State v. McClain, — Idaho —, — P.3d —, 2012 Ida. App. LEXIS 65 (Ct. App. Nov. 2, 2012).

Proof.

That defendant bore the same name as person referred to in judgments of conviction from 1996, with nothing more, was legally insufficient to prove his identity as that person beyond a reasonable doubt, and, thus, the state failed to meet its burden of proving defendant was a persistent violator. However,

since the persistent violator finding did not affect the sentence imposed by the district court, motion to reduce sentence was properly denied, although defendant was entitled to have his judgment of conviction vacated and to have an amended judgment of conviction entered, which did not indicate he was a persistent violator. State v. Medrain, 143 Idaho 329, 144 P.3d 34 (Ct. App. 2006).

A.L.R. Construction and application of enhanced sentencing provision of Armed Career Criminal Act (ACCA), 18 U.S.C.S. § 924(e) — United States supreme court cases. 66 A.L.R. Fed. 2d 1.

Construction and application of enhanced sentencing provision of Armed Career Criminal Act (ACCA), 18 U.S.C.S. § 924(e) — United States supreme court cases. 67 A.L.R. Fed. 2d 1.

19-2515. Sentence in capital cases — Special sentencing proceeding — Statutory aggravating circumstances — Special verdict or written findings. — (1) Except as provided in section 19-2515A, Idaho Code, a person convicted of murder in the first degree shall be liable for the imposition of the penalty of death if such person killed, intended a killing, or acted with reckless indifference to human life, irrespective of whether such person directly committed the acts that caused death.

(2) Where a person is sentenced to serve a term in the penitentiary, after conviction of a crime which falls within the provisions of section 20-223, Idaho Code, except in cases where the court retains jurisdiction, the comments and arguments of the counsel for the state and the defendant relative to the sentencing and the comments of the judge relative to the sentencing shall be recorded. If the comments are recorded electronically, they need not be transcribed. Otherwise, they shall be transcribed by the court reporter.

(3) Where a person is convicted of an offense which may be punishable by death, a sentence of death shall not be imposed unless:

(a) A notice of intent to seek the death penalty was filed and served as provided in section 18-4004A, Idaho Code; and

(b) The jury, or the court if a jury is waived, finds beyond a reasonable doubt at least one (1) statutory aggravating circumstance. Where a statutory aggravating circumstance is found, the defendant shall be sentenced to death unless mitigating circumstances which may be presented are found to be sufficiently compelling that the death penalty would be unjust. The jury shall not direct imposition of a sentence of death unless it unanimously finds at least one (1) statutory aggravating circumstance and unanimously determines that the penalty of death should be imposed.

(4) Notwithstanding any court rule to the contrary, when a defendant is adjudicated guilty of murder in the first degree, whether by acceptance of a plea of guilty, by verdict of a jury, or by decision of the trial court sitting without a jury, no presentence investigation shall be conducted; provided however, that if a special sentencing proceeding is not held or if a special sentencing proceeding is held but no statutory aggravating circumstance has been proven beyond a reasonable doubt, the court may order that a presentence investigation be conducted.

(5)(a) If a person is adjudicated guilty of murder in the first degree, whether by acceptance of a plea of guilty, by verdict of a jury, or by decision of the trial court sitting without a jury, and a notice of intent to seek the death penalty was filed and served as provided in section 18-4004A, Idaho

Code, a special sentencing proceeding shall be held promptly for the purpose of hearing all relevant evidence and arguments of counsel in aggravation and mitigation of the offense. Information concerning the victim and the impact that the death of the victim has had on the victim's family is relevant and admissible. Such information shall be designed to demonstrate the victim's uniqueness as an individual human being and the resultant loss to the community by the victim's death. Characterizations and opinions about the crime, the defendant and the appropriate sentence shall not be permitted as part of any victim impact information. The special sentencing proceeding shall be conducted before a jury unless a jury is waived by the defendant with the consent of the prosecuting attorney.

(b) If the defendant's guilt was determined by a jury verdict, the same jury shall hear the special sentencing proceeding; provided however, that if it is impracticable to reconvene the same jury to hear the special sentencing proceeding due to an insufficient number of jurors, the trial court may dismiss that jury and convene a new jury of twelve (12) persons, plus alternate jurors as the trial court deems necessary pursuant to section 19-1904, Idaho Code.

(c) If the defendant's guilt was determined by a plea of guilty or by a decision of the trial court sitting without a jury, or if a retrial of the special sentencing proceeding is necessary for any reason including, but not limited to, a mistrial in a previous special sentencing proceeding or as a consequence of a remand from an appellate court, the trial court shall impanel a jury of twelve (12) persons, plus alternate jurors as the trial court deems necessary pursuant to section 19-1904, Idaho Code, unless such jury is waived.

(d) If a special sentencing proceeding is conducted before a newly impaneled jury pursuant to the provisions of subsection (5)(b) or (5)(c) of this section, the state and the defense may present evidence to inform the jury of the nature and circumstances of the murder for which the defendant was convicted. The newly impaneled jury shall be instructed that the defendant has previously been found guilty of first-degree murder and that the jury's purpose is limited to making findings relevant for sentencing.

(6) At the special sentencing proceeding, the state and the defendant shall be entitled to present all relevant evidence in aggravation and mitigation. Disclosure of evidence to be relied on in the sentencing proceeding shall be made in accordance with Idaho criminal rule 16. Evidence admitted at trial shall be considered and need not be repeated at the sentencing hearing.

(7) The jury shall be informed as follows:

(a) If the jury finds that a statutory aggravating circumstance exists and no mitigating circumstances exist which would make the imposition of the death penalty unjust, the defendant will be sentenced to death by the court.

(b) If the jury finds the existence of a statutory aggravating circumstance but finds that the existence of mitigating circumstances makes the

imposition of the death penalty unjust or the jury cannot unanimously agree on whether the existence of mitigating circumstances makes the imposition of the death penalty unjust, the defendant will be sentenced to a term of life imprisonment without the possibility of parole; and

(c) If the jury does not find the existence of a statutory aggravating circumstance or if the jury cannot unanimously agree on the existence of a statutory aggravating circumstance, the defendant will be sentenced by the court to a term of life imprisonment with a fixed term of not less than ten (10) years.

(8) Upon the conclusion of the evidence and arguments in mitigation and aggravation:

(a) With regard to each statutory aggravating circumstance alleged by the state, the jury shall return a special verdict stating:

(i) Whether the statutory aggravating circumstance has been proven beyond a reasonable doubt; and

(ii) If the statutory aggravating circumstance has been proven beyond a reasonable doubt, whether all mitigating circumstances, when weighed against the aggravating circumstance, are sufficiently compelling that the death penalty would be unjust.

(b) If a jury has been waived, the court shall:

(i) Make written findings setting forth any statutory aggravating circumstance found beyond a reasonable doubt;

(ii) Set forth in writing any mitigating circumstances considered; and

(iii) Upon weighing all mitigating circumstances against each statutory aggravating circumstance separately, determine whether mitigating circumstances are found to be sufficiently compelling that the death penalty would be unjust and detail in writing its reasons for so finding.

(9) The following are statutory aggravating circumstances, at least one (1) of which must be found to exist beyond a reasonable doubt before a sentence of death can be imposed:

(a) The defendant was previously convicted of another murder.

(b) At the time the murder was committed the defendant also committed another murder.

(c) The defendant knowingly created a great risk of death to many persons.

(d) The murder was committed for remuneration or the promise of remuneration or the defendant employed another to commit the murder for remuneration or the promise of remuneration.

(e) The murder was especially heinous, atrocious or cruel, manifesting exceptional depravity.

(f) By the murder, or circumstances surrounding its commission, the defendant exhibited utter disregard for human life.

(g) The murder was committed in the perpetration of, or attempt to perpetrate, arson, rape, robbery, burglary, kidnapping or mayhem and the defendant killed, intended a killing, or acted with reckless indifference to human life.

(h) The murder was committed in the perpetration of, or attempt to perpetrate, an infamous crime against nature, lewd and lascivious con-

duct with a minor, sexual abuse of a child under sixteen (16) years of age, ritualized abuse of a child, sexual exploitation of a child, sexual battery of a minor child sixteen (16) or seventeen (17) years of age, or forcible sexual penetration by use of a foreign object, and the defendant killed, intended a killing, or acted with reckless indifference to human life.

(i) The defendant, by his conduct, whether such conduct was before, during or after the commission of the murder at hand, has exhibited a propensity to commit murder which will probably constitute a continuing threat to society.

(j) The murder was committed against a former or present peace officer, executive officer, officer of the court, judicial officer or prosecuting attorney because of the exercise of official duty or because of the victim's former or present official status.

(k) The murder was committed against a witness or potential witness in a criminal or civil legal proceeding because of such proceeding.

History.

R.S., R.C., & C.L., § 7992; C.S., § 9036; I.C.A., § 19-2415; am. 1977, ch. 154, § 4, p. 390; am. 1984, ch. 230, § 1, p. 549; am. 1995, ch. 140, § 1, p. 594; am. 1998, ch. 96, § 3, p. 343; am. 2000, ch. 287, § 1, p. 968; am. 2003, ch. 19, § 4, p. 7; am. 2003, ch. 136, § 3, p. 394; am. 2004, ch. 317, § 1, p. 889; am. 2005, ch. 152, § 1, p. 468; am. 2006, ch. 129, § 1, p. 375.

Compiler's Notes. The 2006 amendment, by ch. 129, added present subsection (9)(h) and redesignated former subsections (9)(h) to (j) as present subsections (9)(i) to (k).

Section 3 of S.L. 2006, ch. 129 declared an emergency. Approved March 22, 2006.

Cited in: State v. Porter, 142 Idaho 371, 128 P.3d 908 (2005); Booth v. State, 151 Idaho 612, 262 P.3d 255 (2011); Sivak v. Hardison, 658 F.3d 898 (9th Cir. 2011); Pizzuto v. Blades, 673 F.3d 1003 (9th Cir. 2012).

ANALYSIS

Aggravating Factors.

Where defendant was convicted of two counts of first-degree murder and first-degree arson after killing his ex-wife and her boyfriend and setting fire to his ex-wife's home in an effort to destroy evidence and conceal his crimes, the trial court did not err in granting defendant's petition for postconviction relief, in vacating the capital sentence imposed, and in ordering that defendant be resentenced because the evidence did not establish beyond a reasonable doubt that both victims were killed at the same time to support the (9)(b) aggravator, which permitted the imposition of a capital sentence where, at the time the murder was committed, the defendant also committed another murder. State v. Shackelford, 150 Idaho 355, 247 P.3d 582 (2010), cert. denied, — U.S. — 131 S. Ct. 1601, 179 L. Ed. 2d 516, and cert. denied, — U.S. — 131 S. Ct. 1599, 179 L. Ed. 2d 503 (2011).

—Constitutional Application.

Idaho's former capital sentencing scheme, former § 19-2515, was held to violate the Sixth Amendment, which entitles capital defendants to a jury determination of any fact on which the legislature conditions an increase in their maximum punishment; subsequent to the *Ring* decision, the legislature revised Idaho's capital sentencing statutes, requiring that a jury find and consider the effect of aggravating and mitigating circumstances in order to decide whether a defendant should receive a death sentence. State v. Lovelace, 140 Idaho 73, 90 P.3d 298, cert. denied, 543 U.S. 936, 125 S. Ct. 323, 160 L. Ed. 2d 242 (2004).

Rational trier of fact could have found that the heinous, atrocious, or cruel aggravator of paragraph (9)(e) was satisfied beyond a reasonable doubt where the whole of petitioner's behavior during the murderous assault depicted an attack that was conscienceless, pitiless and unnecessarily torturous to the victim. Leavitt v. Arave, 383 F.3d 809 (9th Cir. 2004), cert. denied, 545 U.S. 1105, 125 S. Ct. 2540, 162 L. Ed. 2d 277 (2005).

The heinous, atrocious, or cruel aggravator of paragraph (9)(e) was not too vague to

sustain petitioner's sentence of death because Idaho's definition sufficiently delineated the statutory language to be constitutional and to guide the discretion of the sentencer where it permitted the sentencer to make a principled distinction between those who deserved the death penalty and those who did not. Leavitt v. Arave, 383 F.3d 809 (9th Cir. 2004), cert. denied, 545 U.S. 1105, 125 S. Ct. 2540, 162 L. Ed. 2d 277 (2005).

—Utter Disregard.

There was sufficient evidence to support the jury's finding that defendant exhibited utter disregard for human life under paragraph (9)(f), because defendant beat a helpless, three month-old baby to death with multiple blows and a nurse, who managed the emergency room, described the defendant as acting in a casual manner. State v. Carson, 151 Idaho 713, 264 P.3d 54 (2011).

Appeal.

When reviewing a district court's findings and analysis of mitigating and aggravating factors, an appellate court must review the record of the district court's findings to determine whether the district court met the mandates of this section. The appellate court must specifically determine: (1) whether the district court overlooked or ignored any raised mitigating factors; (2) whether the evidence supports the aggravating factors found; and (3) whether the district court properly weighed all of the factors. The appellate court is not to reweigh the factors. Rather, it must only determine whether there is evidence to support the aggravating factors and whether the weighing process properly was done. State v. Payne, 146 Idaho 548, 199 P.3d 123 (2008).

Double Jeopardy.

Double jeopardy protection, was not implicated and was not a bar to resentencing defendant pursuant to the procedures set forth in the revised death penalty statutes, § 18-8004 and paragraph (3)(b) of this section. State v. Lovelace, 140 Idaho 73, 90 P.3d 298, cert. denied, 543 U.S. 936, 125 S. Ct. 323, 160 L. Ed. 2d 242 (2004).

Ineffective Assistance of Counsel.

Habeas petitioner, sentenced to death for murder and kidnapping, did not receive ineffective assistance from counsel because the difference between what counsel investigated and presented, and what they could have investigated and presented, was not so pronounced that the new evidence would have outweighed any one of the aggravating circumstances under subsection (9) of this section. Rhoades v. Henry, 611 F.3d 1133 (9th Cir. 2010).

Mental Status of Defendant.

Even though the district court did not properly weigh defendant's mental health evidence, as its opinions showed that it considered the evidence only in the context of whether there was a nexus between defendant's mental health and the crimes, there was no reasonable possibility that the district court would have reached a different sentence, in light of all of the evidence and testimony. State v. Payne, 146 Idaho 548, 199 P.3d 123 (2008).

Inmate was not entitled to habeas relief based on counsel's alleged failure to investigate, develop, and present issues related to his mental state during his kidnapping and murder trial and capital sentencing proceedings. The newly proffered mental state evidence, which was speculative in nature, was not likely to have overcome the aggravating circumstances, which included two other murders. Rhoades v. Henry, 638 F.3d 1027 (9th Cir.), cert. denied, — U.S. —, 132 S. Ct. 401, 181 L. Ed. 3d 263 (2011).

Sentencing by Judge.

This section does not define a separate crime of capital first-degree murder, but merely sets forth the procedures to be followed in order to impose a death sentence, defines the statutory aggravating circumstances, and requires that at least one aggravating circumstance be found beyond a reasonable doubt before a defendant can be sentenced to death; *Ring* did not elevate those statutory aggravating circumstances into elements of a crime and there is no basis for concluding that judicial fact-finding regarding the statutory aggravating circumstances is less accurate than jury fact-finding. Porter v. State, 140 Idaho 780, 102 P.3d 1099 (2004), cert. denied, 545 U.S. 1143, 125 S. Ct. 2967, 162 L. Ed. 2d 894 (2005).

Victim Impact Statements.

Where defendant was found guilty of murder, the appellate court declined to apply a harmless error analysis and remand the case for resentencing with directions to the trial court to exclude victim impact statements calling for the death penalty, or other information that did not comply with *Booth*, and *Payne*, in order not to violate the Eighth Amendment. State v. Lovelace, 140 Idaho 73, 90 P.3d 298, cert. denied, 543 U.S. 936, 125 S. Ct. 323, 160 L. Ed. 2d 242 (2004).

Victim impact statements that were characterizations and opinions about defendant, the crime, and his appropriate punishment, and calls to religious authority as the basis for punishment, were not admissible and, therefore, the district court erred by admitting them. State v. Payne, 146 Idaho 548, 199 P.3d 123 (2008).

Because the defendant did not face the death penalty, the district court properly admitted victim impact statements in which the victim opined about defendant's crime, his character, and the appropriate sentence for his crime. State v. Grant, — Idaho —, 297 P.3d 244 (2013).

A.L.R. Validity, construction, and application of aggravating and mitigating provisions of death penalty statutes — Supreme court cases. 21 A.L.R. Fed. 2d 1.

Construction and application of United States Sentencing Guideline § 2A2.1(b)(1), 18 U.S.C.A., providing enhancement for attempted murder or assault with intent to commit murder dependent upon nature or degree of injury. 30 A.L.R. Fed. 2d 385.

Construction and application of U.S.S.G. § 5G1.3(b), requiring federal sentence to run concurrently to undischarged state sentence when state sentence has been fully taken into account in determining offense level for federal offense — Particular events preceding federal sentence and sentencing credit. 32 A.L.R. Fed. 2d 191.

Construction and application of "official victim" sentencing enhancement of U.S.S.G. § 3A1.2(c), concerning law enforcement officers and prison officials. 32 A.L.R. Fed. 2d 371.

Construction and application of U.S.S.G. § 3B1.1(s), providing sentencing enhancement for organizer or leader of criminal activity — Fraud offenses. 32 A.L.R. Fed. 2d 445.

Downward adjustment for acceptance of responsibility under U.S.S.G. § 3E1.1, 18 USCS — Fraud offenses. 33 A.L.R. Fed. 2d 477.

Construction and application of U.S.S.G. § 5H1.3, concerning mental and emotional conditions as ground for sentencing departure. 34 A.L.R. Fed. 2d 457.

Construction and application of U.S.S.G. § 3B1.1(b), providing sentencing enhancement for manager or supervisor of criminal activity — Drug offenses — Cocaine. 35 A.L.R. Fed. 2d 467.

Validity, construction, and application of U.S.S.G. § 5K2.8, providing for upward sentence departure for extreme conduct. 36 A.L.R. Fed. 2d 95.

Construction and application of U.S.S.G. § 2X1.1, providing sentencing guideline for conspiracy not covered by specific offense guideline. 37 A.L.R. Fed. 2d 449.

Construction and application of U.S.S.G., § 3B1.1(a), 18 USCS, providing sentencing enhancement for organizer or leader of criminal activity — Drug offenses. 43 A.L.R. Fed. 2d 365.

19-2515A. Imposition of death penalty upon mentally retarded person prohibited. — (1) As used in this section:

(a) "Mentally retarded" means significantly subaverage general intellectual functioning that is accompanied by significant limitations in adaptive functioning in at least two (2) of the following skill areas: communication, self-care, home living, social or interpersonal skills, use of community resources, self-direction, functional academic skills, work, leisure, health and safety. The onset of significant subaverage general intelligence functioning and significant limitations in adaptive functioning must occur before age eighteen (18) years.

(b) "Significantly subaverage general intellectual functioning" means an intelligence quotient of seventy (70) or below.

(2) In any case in which the state has provided notice of an intent to seek the death penalty pursuant to section 18-4004A, Idaho Code, and where the defendant intends to claim that he is mentally retarded and call expert witnesses concerning such issue, the defendant shall give notice to the court and the state of such intention at least ninety (90) days in advance of trial, or such other period as justice may require, and shall apply for an order directing that a mental retardation hearing be conducted. Upon receipt of such application, the court shall promptly conduct a hearing without a jury to determine whether the defendant is mentally retarded; provided however, that no court shall, over the objection of any party, receive the evidence of any expert witness on the issue of mental retardation unless such evidence is fully subject to the adversarial process in at least the following particulars:

(a) If a defendant fails to provide notice as required in this subsection, an expert witness shall not be permitted to testify until such time as the state has a complete opportunity to consider the substance of such testimony and prepare for rebuttal through such opposing experts as the state may choose.

(b) A party who expects to call an expert witness to testify on the issue of mental retardation shall, on a schedule to be set by the court, furnish to the opposing party a written synopsis of the findings of such expert or a copy of a written report. The court may authorize the taking of depositions to inquire further into the substance of such synopsis or report.

(c) Raising the issue of mental retardation shall constitute a waiver of any privilege that might otherwise be interposed to bar the production of evidence on the subject and, upon request, the court shall order that the state's experts shall have access to the defendant in such cases for the purpose of having its own experts conduct an examination in preparation for any legal proceeding at which the defendant's mental retardation may be in issue.

(d) The court is authorized to appoint at least one (1) expert at public expense upon a showing by an indigent defendant that there is a need to inquire into questions of the defendant's mental retardation. The defendant shall pay the costs of examination if he is financially able. The determination of ability to pay shall be made in accordance with chapter 8, title 19, Idaho Code. The report of the examination shall be filed in triplicate with the clerk of the court, who shall cause copies to be delivered to the prosecuting attorney and to counsel for the defendant.

(e) If an examination cannot be conducted by reason of the unwillingness of the defendant to cooperate with either a court-appointed examiner or with any state expert, the examiner or expert shall so advise the court in writing and include, if possible, an opinion as to whether such unwillingness of the defendant was the result of mental retardation. The court may consider the defendant's lack of cooperation for its effect on the credibility of the defendant's mental retardation claim.

(3) If the court finds by a preponderance of the evidence that the defendant is mentally retarded, the death penalty shall not be imposed. The jury shall not be informed of the mental retardation hearing or the court's findings concerning the defendant's claim of mental retardation.

(4) In the event of a conviction of first-degree murder of a person who has been found to be mentally retarded pursuant to subsections (2) and (3) of this section, a special sentencing proceeding shall be held promptly to determine whether the state has proven beyond a reasonable doubt the existence of any of the statutory aggravating circumstances set forth in subsections 19-2515(9)(a) through (k), Idaho Code.

(a) The special sentencing proceeding shall be conducted before a jury unless a jury is waived by the defendant with the consent of the prosecuting attorney.

(i) If the defendant's guilt was determined by a jury verdict, the same jury shall hear the special sentencing proceeding; provided however, that if it is impracticable to reconvene the same jury to hear the special

sentencing proceeding due to an insufficient number of jurors, the trial court may dismiss that jury and convene a new jury of twelve (12) persons, plus alternate jurors as the trial court deems necessary pursuant to section 19-1904, Idaho Code.

(ii) If the defendant's guilt was determined by a plea of guilty or by a decision of the trial court sitting without a jury, or if a retrial of the special sentencing proceeding is necessary for any reason including, but not limited to, a mistrial in a previous special sentencing proceeding or as a consequence of a remand from an appellate court, the trial court shall impanel a jury of twelve (12) persons, plus alternate jurors as the trial court deems necessary pursuant to section 19-1904, Idaho Code, unless such jury is waived.

(iii) If a special sentencing proceeding is conducted before a newly impaneled jury, the state and the defense may present evidence to inform the jury of the nature and circumstances of the murder for which the defendant was convicted. The newly impaneled jury shall be instructed that the defendant has previously been found guilty of first-degree murder and that the jury's purpose is limited to making findings relevant for sentencing.

(b) At the special sentencing proceeding, the state and the defendant shall be entitled to present all evidence relevant to the determination of whether or not a statutory aggravating circumstance has been proven beyond a reasonable doubt. Disclosure of evidence to be relied on in the sentencing proceeding shall be made in accordance with Idaho criminal rule 16. Evidence admitted at trial shall be considered and need not be repeated at the sentencing hearing.

(c) If a unanimous jury, or the court if a jury is waived, finds the existence of a statutory aggravating circumstance beyond a reasonable doubt, the court shall impose a fixed life sentence. If a unanimous jury, or the court if a jury is waived, does not find the existence of a statutory aggravating circumstance beyond a reasonable doubt, the court shall impose a life sentence with a minimum period of confinement of not less than ten (10) years during which period of confinement the defendant shall not be eligible for parole or discharge or credit or reduction of sentence for good conduct, except for meritorious service.

(5) Nothing in this section is intended to alter the application of any rule of evidence or limit or extend the right of any party to assert any claim or defense otherwise available to that party.

(6) Any remedy available by post-conviction procedure or habeas corpus shall be pursued according to the procedures and time limits set forth in section 19-2719, Idaho Code.

History.

I.C., § 19-2515A, as added by 2003, ch. 136, § 4, p. 394; am. 2006, ch. 129, § 2, p. 375.

Compiler's Notes. The 2006 amendment, by ch. 129, substituted "through (k)" for "through (j)" in the introductory paragraph of subsection (4).

Section 3 of S.L. 2006, ch. 129 declared an emergency. Approved March 22, 2006.

Defendant Not Mentally Retarded.

In a capital murder case, petitioner's request for postconviction relief on the basis that he was mentally retarded was properly dismissed because he scored an IQ of 72 when

he was twenty-eight years old, there was no expert testimony opining what petitioner's IQ probably would have been eleven years earlier, and petitioner was found to be competent to stand trial. In an expert's opinion, petitioner understood the charges against him and their potential consequences and he was capable of assisting in his defense. Pizzuto v. State, 146 Idaho 720, 202 P.3d 642 (2008).

19-2516. Cost of presentence investigation. — If a court orders a presentence investigation to be conducted, the court shall order the defendant to pay an amount to be determined by the department of correction, not to exceed one hundred dollars ($100), of the cost of conducting the presentence investigation and preparing the presentence investigation report. Such court orders shall be included in the judgment. Any such amount to be paid by the defendant shall be determined by the department of correction and shall be based on the defendant's ability to pay. In determining a defendant's ability to pay, the department of correction may consider such factors as the defendant's income, property owned, outstanding obligations and the number and ages of dependents. Such payments shall be made to the department of correction and will be placed in the probation and parole receipts account created pursuant to section 20-225A, Idaho Code, and utilized as reimbursement for the cost of conducting the presentence investigation and preparing the presentence investigation report. Moneys in the probation and parole receipts account may be expended only after appropriation by the legislature.

History.
I.C., § 19-2516, as added by 2011, ch. 74, § 1, p. 156.

19-2518. Lien of judgment for fine.

Attorney's Fees.
Although this section authorizes a collector to pursue a money judgment, for a delinquent fine, against a defendant/debtor as though it were in a civil action, the basis for that action is a criminal judgment that resulted from a criminal proceeding, not a commercial transaction; thus, § 12-120(3) is inapplicable. Collection Bureau, Inc. v. Dorsey, 150 Idaho 695, 249 P.3d 1150 (2011).

19-2519. Entry of judgment — Record.

Cited in: State v. Marsh, — Idaho —, 283 P.3d 107 (Ct. App. 2011).

19-2520. Extended sentence for use of firearm or deadly weapon. — Any person convicted of a violation of sections 18-905 (aggravated assault defined), 18-907 (aggravated battery defined), 18-909 (assault with intent to commit a serious felony defined), 18-911 (battery with intent to commit a serious felony defined), 18-1401 (burglary defined), 18-1508(3), 18-1508(4), 18-1508(5), 18-1508(6) (lewd conduct with minor or child under sixteen), 18-2501 (rescuing prisoners), 18-2505 (escape by one charged with or convicted of a felony), 18-2506 (escape by one charged with or convicted of a misdemeanor), 18-4003 (degrees of murder), 18-4006 (manslaughter), 18-4015 (assault with intent to murder), 18-4501 (kidnapping defined), 18-5001 (mayhem defined), 18-6101 (rape defined), 18-6501 (robbery defined), 37-

2732(a) (delivery, manufacture or possession of a controlled substance with intent to deliver) or 37-2732B (trafficking), Idaho Code, who displayed, used, threatened, or attempted to use a firearm or other deadly weapon while committing or attempting to commit the crime, shall be sentenced to an extended term of imprisonment. The extended term of imprisonment authorized in this section shall be computed by increasing the maximum sentence authorized for the crime for which the person was convicted by fifteen (15) years.

For the purposes of this section, "firearm" means any deadly weapon capable of ejecting or propelling one (1) or more projectiles by the action of any explosive or combustible propellant, and includes unloaded firearms and firearms which are inoperable but which can readily be rendered operable.

The additional terms provided in this section shall not be imposed unless the fact of displaying, using, threatening, or attempting to use a firearm or other deadly weapon while committing the crime is separately charged in the information or indictment and admitted by the accused or found to be true by the trier of fact at the trial of the substantive crime.

This section shall apply even in those cases where the use of a firearm is an element of the offense.

History.

I.C., § 19-2520, as added by 1977, ch. 10, § 1, p. 20; am. 1980, ch. 296, § 1, p. 767; am. 1983, ch. 183, § 1, p. 496; am. 1986, ch. 319, § 2, p. 784; am. 1988, ch. 328, § 1, p. 990; am. 1993, ch. 264, § 1, p. 896; am. 2006, ch. 249, § 1, p. 758.

Compiler's Notes. The 2006 amendment, by ch. 249, in the third paragraph, deleted "provided, however, that the prosecutor shall give notice to the defendant of intent to seek an enhanced penalty at or before the preliminary hearing or before a waiver of the preliminary hearing, if any" from the end.

Cited in: State v. Izaguirre, 145 Idaho 820, 186 P.3d 676 (Ct. App. 2008); State v. Mantz, 148 Idaho 303, 222 P.3d 471 (Ct. App. 2009).

ANALYSIS

Aggravated Assault.

Defendant's sentence for aggravated assault, with a sentence enhancement for using a deadly weapon during the crime, was vacated and remanded for resentencing without an enhancement as the finding that defendant used a firearm in committing the assault was not equivalent of a finding needed for deadly weapon enhancement. State v. Donk, 145 Idaho 582, 181 P.3d 508 (Ct. App. 2007).

Aggravated Battery.

If two offenses of aggravated battery are committed using a firearm, but those crimes were committed in the same indivisible course of conduct, a defendant can only be sentenced with one enhancement penalty. It is within the inherent authority of the trial judge to make a finding regarding the divisibility or indivisibility of defendant's crimes. State v. Peregrina, 151 Idaho 538, 261 P.3d 815 (2011).

Appellate Review.

Because no finding regarding the indivisibility of defendant's crimes was made, remand was necessary for a finding on the issue of whether the crimes of aggravated battery and burglary arose from an indivisible course of conduct pursuant to § 19-2520E. State v. McGiboney, 152 Idaho 769, 274 P.3d 1284 (Ct. App. 2012).

Elements.

Under this section, the state must prove beyond a reasonable doubt to a jury: (1) the defendant was convicted of one or more of the delineated crimes; (2) the defendant displayed, used, threatened, or attempted to use a firearm or other deadly weapon during the commission of these crimes; and (3) if the deadly weapon at issue is a firearm, it has (a) the capability of propelling projectiles; and (b) if the firearm was not operable, it could readily have been rendered operable. Once these

facts are found, this section mandates an increase to the maximum penalty allowed for the enumerated crime by fifteen years. State v. McGiboney, 152 Idaho 769, 274 P.3d 1284 (Ct. App. 2012).

Enhancement of Sentence.

In prosecution for aggravated battery for shooting and severely injuring a state trooper during a traffic stop, it was not error for trial court to enhance defendant's sentence under both § 18-915 and this section. State v. Kerrigan, 143 Idaho 185, 141 P.3d 1054 (2006).

Components of an enhanced sentence need not be separately articulated. State v. Farwell, 144 Idaho 732, 170 P.3d 397 (2007).

Because it was not necessary for the judge to separately articulate the components of defendant's enhanced sentence, the sentence was capable of review. State v. Farwell, 144 Idaho 732, 170 P.3d 397 (2007).

Trial court erred in instructing the jury on sentence enhancement under this section, because the jury instruction allowed application of the firearm enhancement if the jury found that defendant used a firearm in the attempted robbery, even though the indictment alleged use of a weapon only as to the burglary. The instruction thus allowed for an additional punishment on the finding of additional facts that were not charged. This constituted a constructive amendment to the indictment and was fundamental error. State v. Gerardo, 147 Idaho 22, 205 P.3d 671 (Ct. App. 2009).

Inconsistent Verdicts.

While jury's finding that defendant was guilty of aggravated battery, which by definition included the use of a deadly weapon, was certainly inconsistent with its negative decision regarding a deadly weapon sentence enhancement, this bore no relevance to sufficiency of the evidence to uphold a guilty verdict on the aggravated battery charge. State v. Purdie, 144 Idaho 911, 174 P.3d 881 (Ct. App. 2007).

Information.

Sentencing enhancement under this section may be imposed only if the use of a firearm in committing the crime is separately charged in the information or indictment and is either admitted by the accused or found to be true by the fact-finder. State v. Gerardo, 147 Idaho 22, 205 P.3d 671 (Ct. App. 2009).

19-2520E. Multiple enhanced penalties prohibited.

Analysis

Construction.
Construction with other law.
Question of divisibility.

Construction.

If two crimes are committed using a firearm, but those crimes were committed in the same indivisible course of conduct, a defendant can only be sentenced with one enhancement penalty. State v. McGiboney, 152 Idaho 769, 274 P.3d 1284 (Ct. App. 2012).

Construction with Other Law.

Because Idaho Crim. R. 35 is limited to legal questions surrounding defendant's sentence, the factual issue of the divisibility of conduct for purposes of this section had to be apparent from the face of the record and determined before defendant filed a Rule 35 motion; by reexamining the facts underlying the crimes to determine that defendant's sentence was illegal, the district court exceeded the "narrow" scope of Rule 35 and thus exceeded the scope of its authority. State v. Clements, 148 Idaho 82, 218 P.3d 1143 (2009).

Question of Divisibility.

If two offenses of aggravated battery are committed using a firearm, but those crimes were committed in the same indivisible course of conduct, a defendant can only be sentenced with one enhancement penalty. It is within the inherent authority of the trial judge to make a finding regarding the divisibility or indivisibility of defendant's crimes. State v. Peregrina, 151 Idaho 538, 261 P.3d 815 (2011).

Because no finding regarding the indivisibility of defendant's crimes was made, remand was necessary for a finding on the issue of whether the crimes of aggravated battery and burglary arose from an indivisible course of conduct pursuant to this section. State v. McGiboney, 152 Idaho 769, 274 P.3d 1284 (Ct. App. 2012).

19-2520G. Mandatory minimum sentencing. — (1) Pursuant to section 13, article V of the Idaho constitution, the legislature intends to provide mandatory minimum sentences for repeat offenders who have previously been found guilty of or pleaded guilty to child sexual abuse. The legislature hereby finds and declares that the sexual exploitation of children constitutes a wrongful invasion of a child and results in social, developmen-

tal and emotional injury to the child. It is the policy of the legislature to protect children from the physical and psychological damage caused by their being used in sexual conduct. In order to protect children from becoming victims of this type of conduct by perpetrators, it is necessary to provide the mandatory minimum sentencing format contained in subsection (2) of this section. By enacting mandatory minimum sentences, the legislature does not seek to limit the court's power to impose in any case a longer sentence as provided by law.

(2) Any person who is found guilty of or pleads guilty to any offense requiring sex offender registration as set forth in section 18-8304, Idaho Code, or any attempt or conspiracy to commit such a crime, shall be sentenced to a mandatory minimum term of confinement to the custody of the state board of correction for a period of not less than fifteen (15) years, if it is found by the trier of fact that previous to the commission of such crime the defendant has been found guilty of or has pleaded guilty to a violation of any crime or an offense committed in this state or another state which, if committed in this state, would require the person to register as a sexual offender as set forth in section 18-8304, Idaho Code.

(3) The mandatory minimum term provided in this section shall be imposed where the aggravating factor is separately charged in the information or indictment and admitted by the accused or found to be true by the trier of fact at a trial of the substantive crime. A court shall not have the power to suspend, withhold, retain jurisdiction, or commute a mandatory minimum sentence imposed pursuant to this section. Any sentence imposed under the provisions of this section shall run consecutive to any other sentence imposed by the court.

History.

I.C., § 19-2520G, as added by 1993, ch. 152, § 1, p. 387; am. 2006, ch. 154, § 1, p. 469; am. 2011, ch. 311, § 25, p. 882.

Compiler's Notes. The 2006 amendment, by ch. 154, in subsection (2), substituted "or pleads guilty to any offense requiring sex offender registration as set forth in section 18-8304, Idaho Code" for "violating the provisions of section 18-1506 (sexual abuse of a child under age sixteen years), 18-1508 (lewd conduct with a minor under sixteen), or 18-1508A, Idaho Code (sexual battery of a minor child sixteen or seventeen years of age)", "fifteen (15) years" for "five (5) years", and "require the person to register as a sexual offender as set forth in section 18-8304, Idaho Code" for "be punishable pursuant to any of the sections of the Idaho Code identified in this subsection"; added present subsection (3); and redesignated former subsection (3) as (4).

The 2011 amendment, by ch. 311, deleted former subsection (3) which read: "Any person who is found guilty of or pleads guilty to any offense requiring sex offender registration as set forth in section 18-8304, Idaho Code, or any attempt or conspiracy to commit such a crime, shall be sentenced to a mandatory minimum term of confinement to the custody of the state board of correction for a period of not less than life, if it is found by the trier of fact that previous to the commission of such crime the defendant has been and is designated a violent sexual predator as set forth in section 18-8314, Idaho Code, or the equivalent under the laws of another state at the time of committing such offense" and renumbered former subsection (4) as present subsection (3).

ANALYSIS

Constitutionality.
Determinate sentence.

Constitutionality.

Defendant moved to dismiss sentence enhancement for being a repeat sexual offender on the ground that it was inapplicable or unconstitutionally vague. After an affirmative finding of defendant's prior sexual history, the district court was constrained by this section to impose the minimum term of confinement of fifteen years; the underlying offense carried a maximum allowable penalty of less than fifteen years but this did not make the statute

unconstitutionally vague or inapplicable. State v. Ewell, 147 Idaho 31, 205 P.3d 680 (Ct. App. 2009).

Determinate Sentence.

The language of this section requires that the mandatory minimum sentence be served in confinement and, as such, it is a "fixed" or determinate sentence. State v. Ephraim, 152 Idaho 176, 267 P.3d 1291 (Ct. App. 2011).

A.L.R. Validity, construction, and application of state statute including "sexually motivated offenses" within definition of sex offense for purposes of sentencing or classification of defendant as sex offender. 30 A.L.R.6th 373.

19-2521. Criteria for placing defendant on probation or imposing imprisonment.

Analysis

Denial of probation.
Discretion of court.
Matters considered.
Purpose.
Sentence supported.
Severity of sentence.
Sex-related offenses.

Denial of Probation.

Consideration of defendant's indigence in denying him probation did not violate the U.S. Constitution's Due Process and Equal Protection Clauses because (1) the mere possibility of receiving probation after a period of retained jurisdiction was not a liberty interest sufficient to require the procedural due process of a hearing before a court relinquished jurisdiction; (2) the state had a strong and legitimate interest in disallowing probation for an offender if the offender could not be adequately supervised or if his conditional release would present an undue risk to society; (3) the denial of probation for defendant due to his indigence was directly and rationally related to this state interest; and (4) defendant had not suggested any alternative method by which the trial court could have insured that he would have adequate housing and treatment, nor other means to minimize the risk of reoffense. State v. Braaten, 144 Idaho 606, 167 P.3d 357 (Ct. App. 2007).

Discretion of Court.

The factors a sentencing judge may consider when determining whether to suspend the sentence of imprisonment are appropriately considered by a judge and not a jury. There is nothing in this section that extends the maximum penalty for a crime, and, therefore, there is no need for additional findings by a jury. State v. Stover, 140 Idaho 927, 104 P.3d 969 (2005).

Matters Considered.

Trial court did not err when it sentenced defendant to concurrent sentences of life, with 28 years determinate, for burglary and assault with intent to commit robbery with a persistent violator enhancement, because the trial court discussed the seriousness of the crimes, the defendant's progression from misdemeanors to felonies, and the objectives of protecting society, deterrence, and punishment. State v. Miller, 151 Idaho 828, 264 P.3d 935 (2011).

Purpose.

This section is merely the codification of historical factors to be taken into account in an indeterminate sentencing system and gives suggested criteria for the court to use in exercising its discretion, because those factors are sentencing factors and not elements of the offense: a jury is not required to make the finding that imprisonment is necessary for the protection of the public. State v. Stover, 140 Idaho 927, 104 P.3d 969 (2005).

Sentence Supported.

In defendant's murder case, the court properly sentenced him to life in prison. Court's discussion of defendant's intent was not a finding that he had committed a crime distinct from the one charged and of which he had been found guilty; rather, it was a discussion of the grave nature of the crime and the character defendant showed by inflicting such extreme injuries on a helpless and innocent child. State v. Stevens, 146 Idaho 139, 191 P.3d 217 (2008).

Severity of Sentence.

District court properly sentenced defendant to prison for grand theft, based, in part, on defendant's inability to pay restitution; other factors, such as prior similar offenses, also influenced the severity of the sentence. State v. Todd, 147 Idaho 321, 208 P.3d 303 (Ct. App. 2009).

Sex-Related Offenses.

Appellate court considered the extent and character of any admissions by defendant and conclusions based thereon in the psychosexual evaluation (PSE), the extent of the sentencing court's reliance on the PSE which could be demonstrated from the record, and the totality of the evidence before the sentencing court, and the appellate court could not say that there was a reasonable probability that, absent the PSE, defendant would have received a more favorable sentence; defen-

dant failed to demonstrate prejudice in satisfaction of the second prong of the *Strickland* standard, and the district court's dismissal his claim of ineffective assistance of counsel for counsel's failure to advise defendant regarding his rights prior to the PSE was affirmed. Hughes v. State, 148 Idaho 448, 224 P.3d 515 (Ct. App. 2009).

A.L.R. Validity of condition of probation, supervised release, or parole restricting computer use or internet access. 4 A.L.R.6th 1.

Validity, construction, and application of state statute including "sexually motivated offenses" within definition of sex offense for purposes of sentencing or classification of defendant as sex offender. 30 A.L.R.6th 373.

19-2522. Examination of defendant for evidence of mental condition — Appointment of psychiatrists or licensed psychologists — Hospitalization — Reports. — (1) If there is reason to believe the mental condition of the defendant will be a significant factor at sentencing and for good cause shown, the court shall appoint at least one (1) psychiatrist or licensed psychologist to examine and report upon the mental condition of the defendant. The costs of examination shall be paid by the defendant if he is financially able. The determination of ability to pay shall be made in accordance with chapter 8, title 19, Idaho Code. The order appointing or requesting the designation of a psychiatrist or licensed psychologist shall specify the issues to be resolved for which the examiner is appointed or designated.

(2) In making such examination, any method may be employed which is accepted by the examiner's profession for the examination of those alleged to be suffering from a mental illness or defect.

(3) The report of the examination shall include the following:

(a) A description of the nature of the examination;

(b) A diagnosis, evaluation or prognosis of the mental condition of the defendant;

(c) An analysis of the degree of the defendant's illness or defect and level of functional impairment;

(d) A consideration of whether treatment is available for the defendant's mental condition;

(e) An analysis of the relative risks and benefits of treatment or nontreatment;

(f) A consideration of the risk of danger which the defendant may create for the public if at large.

(4) The report of the examination shall be filed in triplicate with the clerk of the court, who shall cause copies to be delivered to the prosecuting attorney and to counsel for the defendant.

(5) When the defendant wishes to be examined by an expert of his own choice, such examiner shall be permitted to have reasonable access to the defendant for the purpose of examination.

(6) If a mental health examination of the defendant has previously been conducted, whether pursuant to section 19-2524, Idaho Code, or for any other purpose, and a report of such examination has been submitted to the court, and if the court determines that such examination and report provide the necessary information required in subsection (3) of this section, and the examination is sufficiently recent to reflect the defendant's present mental condition, then the court may consider such prior examination and report as the examination and report required by this section and need not order an

additional examination of the defendant's mental condition. The provisions of this subsection shall not apply to examinations and reports performed or prepared pursuant to section 18-211 or 18-212, Idaho Code, for the purpose of determining the defendant's fitness to proceed, unless the defendant knowingly, voluntarily and intelligently consents to having such examination and report used at sentencing.

(7) Nothing in this section is intended to limit the consideration of other evidence relevant to the imposition of sentence.

History.

I.C., § 19-2522, as added by 1982, ch. 368, § 9, p. 919; am. 2009, ch. 124, § 1, p. 390; am. 2012, ch. 225, § 1, p. 611.

Compiler's Notes. The 2009 amendment, by ch. 124, added subsection (6) and redesignated former subsection (6) as subsection (7).

The 2012 amendment, by ch. 225, in the first sentence in subsection (6), inserted "whether" and "or for any other purpose", deleted "by this section, including all of the information specified" following "information required", inserted "and the examination is sufficiently recent to reflect the defendant's present mental condition", and inserted "prior" following "the court may consider such"; and added the last sentence in subsection (6).

Analysis

Discretion of court.
Evaluation required.
Evidence.
Failure to request evaluation.
Sufficiency of evaluation.

Discretion of Court.

Where the evidence indicated that defendant's criminal actions were part of a suicide plan, a district court erred by failing to sua sponte order a psychological examination. The district court abused its discretion by proceeding with sentencing since a presentence investigation report did not contain adequate information regarding defendant's treatment or diagnosis. State v. Collins, 144 Idaho 408, 162 P.3d 787 (Ct. App. 2007).

Evaluation Required.

Defendant's sentence after being convicted of grand theft was inappropriate because information in the arrest reports, the competency evaluation reports, and the PSI cried out for a thorough assessment of defendant's mental condition. That information could have aided in assessing defendant's true culpability for the offense, his suitability for probation, and the type of treatment that should have been ordered or recommended during probation or incarceration. State v. Banbury, 145 Idaho 265, 178 P.3d 630 (Ct. App. 2007).

Where defendant pleaded guilty to second degree murder, the district court imposed a life sentence with sixty years determinate. The district court abused its discretion by denying defendant's motion to reduce the sentence without granting his motion for neuropsychological evaluation at public expense. State v. Izaguirre, 145 Idaho 820, 186 P.3d 676 (Ct. App. 2008).

In robbery prosecution, district court's failure to order a psychological evaluation for the purpose of sentencing warranted remand, as there was sufficient information before that court to indicate that defendant's mental condition would be a significant factor in sentencing. State v. Durham, 146 Idaho 364, 195 P.3d 723 (Ct. App. 2008).

Where defendant proceeding pro se on two counts of robbery exhibited bizarre behavior during the pretrial and trial process and mentioned a head injury, the district court's failure to sua sponte order a psychiatric evaluation under § 18-211 and conduct a hearing to determine his competence to stand trial was an abuse of discretion. Based on defendant's claim of mental incapacity, the district court did order a psychological evaluation for purposes of sentencing. State v. Hawkins, 148 Idaho 774, 229 P.3d 379 (Ct. App. 2009).

Trial court erred under subsection (1) in denying defendant's motion for a presentence psychological evaluation during the sentencing phase of trial, because the record demonstrated that defendant's mental condition was a significant factor in determining the sentence; the trial court had explicitly stated its beliefs that "certain mental factors" existed and that defendant needed psychological treatment. State v. Hanson, 152 Idaho 314, 271 P.3d 712 (2012).

When a defendant's mental condition is a significant factor for sentencing, the district court is obligated, pursuant to this section, to order a psychological evaluation of the defendant, unless other information before the court already satisfies that requirement. The use of existing competency evaluations is not sufficient. State v. Carter, — Idaho —, — P.3d —, 2012 Ida. App. LEXIS 12 (Ct. App. Feb. 8, 2012).

Evidence.

District court did not err by allowing the admission during the sentencing hearing of

statements defendant made to the state's psychological experts because § 18-207 does not violate the Eighth Amendment and § 18-215 and this section do not limit the admissibility of the statements. By its terms, this section does not limit the consideration of other relevant evidence, and § 18-215 limits the admissibility only of statements made during examinations pursuant to three specific statutory sections; defendant's examinations were done pursuant to § 18-207, which is not within the ambit of § 18-215. State v. Payne, 146 Idaho 548, 199 P.3d 123 (2008).

Failure to Request Evaluation.

No manifest error occurred when the trial court failed to order, sua sponte, a psychological evaluation for use in sentencing a 67-year-old defendant for lewd conduct with a seven-year-old child. Even if defendant's dementia was a significant factor at sentencing, the district court already had a psychosexual evaluation and social/sexual assessment before it. State v. Clinton, — Idaho —, — P.3d —, 2012 Ida. App. LEXIS 49 (Ct. App. Aug. 20, 2012).

Sufficiency of Evaluation.

Psychological evaluations to determine a defendant's competence to stand trial or aid in his defense, conducted pursuant to § 18-211, often will be insufficient to inform the court's sentencing decision, because they will not address the factors delineated in this section. State v. Carter, — Idaho —, — P.3d —, 2012 Ida. App. LEXIS 12 (Ct. App. Feb. 8, 2012).

19-2523. Consideration of mental illness in sentencing.

Cited in: State v. Collins, 144 Idaho 408, 162 P.3d 787 (Ct. App. 2007).

ANALYSIS

Factors.
Post-conviction relief.
Pre-sentence mental examination.
Psychiatric report.

Factors.

Trial court did not err when it sentenced defendant to concurrent sentences of life, with 28 years determinate, for burglary and assault with intent to commit robbery with a persistent violator enhancement because the trial court considered defendant's mental health condition, discussed the seriousness of the crimes, defendant's progression from misdemeanors to felonies, and the objectives of protecting society, deterrence, and punishment. State v. Miller, 151 Idaho 828, 264 P.3d 935 (2011).

Although § 19-2522(3) does not include the defendant's mental status at the time of a charged offense as a point that must be addressed in a psychological evaluation, subsection (f) of this section makes the defendant's appreciation of the wrongfulness of his actions a factor to be considered, when the defendant's mental condition is at issue. State v. Carter, — Idaho —, — P.3d —, 2012 Ida. App. LEXIS 12 (Ct. App. Feb. 8, 2012).

Post-Conviction Relief.

After appellant violated the terms of his probation, the district court ordered into execution his sentence of thirty years for lewd conduct. The post-conviction court erred in summarily dismissing appellant's claim that a neuropsychological evaluation required vacation of his sentence; information on appellant's bi-polar disorder would have been relevant to appellant's probation revocation proceedings, because the district court might have authorized treatment for the condition while he was on probation. Knutsen v. State, 144 Idaho 433, 163 P.3d 222 (Ct. App. 2007).

Pre-Sentence Mental Examination.

Trial court erred in denying defendant's motion for a presentence psychological evaluation during the sentencing phase of trial, because the record demonstrated that defendant's mental condition was a significant factor in determining the sentence; the trial court had explicitly stated its beliefs that "certain mental factors" existed and that defendant needed psychological treatment. State v. Hanson, 152 Idaho 314, 271 P.3d 712 (2012).

Psychiatric Report.

In robbery prosecution, district court's failure to order a psychological evaluation for the purpose of sentencing warranted remand, as there was sufficient information before that court to indicate that defendant's mental condition would be a significant factor in sentencing. State v. Durham, 146 Idaho 364, 195 P.3d 723 (Ct. App. 2008).

A.L.R. Extended commitment of one committed to institution as consequence of acquittal of crime on ground of insanity. 52 A.L.R.6th 567.

19-2524. Consideration of community-based treatment to meet behavioral health needs in sentencing and post-sentencing proceedings. — (1) After a defendant has pled guilty to or been found guilty

of a felony, and at any time thereafter while the court exercises jurisdiction over the defendant, behavioral health needs determinations shall be conducted when, and as provided by, this section.

(a) As part of the presentence process, a screening to determine whether a defendant is in need of a substance use disorder assessment and/or a mental health examination shall be made in every felony case unless the court waives the requirement for a screening. The screening shall be performed within seven (7) days after the plea of guilty or finding of guilt.

(b) At any time after sentencing while the court exercises jurisdiction over the defendant, the court may order such a screening to be performed by individuals authorized or approved by the department of correction if the court determines that one is indicated. The screening shall be performed within seven (7) days after the order of the court requiring such screening.

(2) Substance use disorder provisions.

(a) Should a screening indicate the need for further assessment of a substance use disorder, the necessary assessment shall be timely performed so as to avoid any unnecessary delay in the criminal proceeding and not later than thirty-five (35) days after a plea of guilty or finding of guilt or other order of the court requiring such screening. The assessment may be performed by qualified employees of the department of correction or by private providers approved by the department of health and welfare. If the screening or assessment is not timely completed, the court may order that the screening be performed by another qualified provider.

(b) Following completion of the assessment, the results of the assessment, including a determination of whether the defendant meets diagnostic criteria for a substance use disorder and the recommended level of care, shall be submitted to the court as part of the presentence investigation report or other department of correction report to the court.

(c) Following the entry of a plea of guilty or a finding of guilt, the court may order, as a condition of the defendant's continued release on bail or on the defendant's own recognizance, that if the assessment reflects that the defendant meets diagnostic criteria for a substance use disorder, the defendant shall promptly, and prior to sentencing, begin treatment at the recommended level of care.

(d) If the court concludes at sentencing, or at any time after sentencing while the court exercises jurisdiction over the defendant, that the defendant meets diagnostic criteria for a substance use disorder, and if the court places the defendant on probation, the court may order the defendant, as a condition of probation, to undergo treatment at the recommended level of care, subject to modification of the level of care by the court. If substance use disorder treatment is ordered, all treatment shall be performed by a qualified private provider approved by the department of health and welfare. The court may order that if the level of care placement or the treatment plan is modified in any material term, the department of correction shall notify the court stating the reason for the modifications and informing the court as to the clinical alternatives available to the defendant.

(e) In no event shall the persons or facility doing the assessment be the person or facility that provides the treatment unless this requirement is waived by the court or where the assessment and treatment are provided by or through a federally recognized Indian tribe or federal military installation, where diagnosis and treatment are appropriate and available.

(f) Defendants who have completed department of correction institutional programs may receive after care services from qualified employees of the department of correction.

(g) The expenses of all screenings and assessments for substance use disorder provided or ordered under this section shall be borne by the department of correction. The expenses for treatment provided or ordered under this section shall be borne by the department of correction unless the defendant is placed in a treatment program which is funded by an alternate source. The department of correction shall be entitled to any payment received by the defendant or to which he may be entitled from any public or private source available to the department of correction for the service provided to the defendant. The department of correction may promulgate rules for a schedule of fees to be charged to defendants for the substance use disorder assessments and treatments provided to the defendants based upon the actual costs of such services and the ability of a defendant to pay. The department of correction shall use the state approved financial eligibility form and reimbursement schedule as set forth in IDAPA 16.07.01.

(3) Mental health provisions.

(a) Should the mental health screening indicate that a serious mental illness may be present, then the department of correction shall refer the defendant to the department of health and welfare for further examination. The examination shall be timely performed so as to avoid any unnecessary delay in the criminal proceeding and not later than thirty-five (35) days after a plea of guilty or finding of guilt or other order of the court requiring such screening.

(b) The examination may be performed by qualified department of health and welfare employees or by private providers under contract with the department of health and welfare, provided that such examination shall at a minimum include an in-depth evaluation of the following:

(i) Mental health concerns;

(ii) Psychosocial risk factors;

(iii) Medical, psychiatric, developmental and other relevant history;

(iv) Functional impairments;

(v) Mental status examination;

(vi) Multiaxial diagnoses; and

(vii) Any other examinations necessary to provide the court with the information set forth in paragraph (c) of this subsection.

(c) Upon completion of the mental health examination, the court shall be provided, as part of the presentence report or other department of health and welfare report to the court, a copy of the mental health assessment along with a summary report. The summary report shall include the following:

(i) Description and nature of the examination;
(ii) Multiaxial diagnoses;
(iii) Description of the defendant's diagnosis and if the defendant suffers from a serious mental illness (SMI) as that term is now defined, or is hereafter amended, in IDAPA 16.07.33.010, to also include post-traumatic stress disorder;
(iv) An analysis of the degree of impairment due to the defendant's diagnosis;
(v) Consideration of the risk of danger the defendant may create for the public; and
(vi) If the defendant suffers from a serious mental illness the report shall also include a plan of treatment that addresses the following:
1. An analysis of the relative risks and benefits of treatment versus nontreatment;
2. Types of treatment appropriate for the defendant; and
3. Beneficial services to be provided.

(d) If the court, after receiving a mental health examination and plan of treatment, determines that additional information is needed regarding the mental condition of the defendant or the risk of danger such condition may create for the public, the court may order additional evaluations and/or recommendations for treatment to be furnished by a psychiatrist, licensed physician or licensed psychologist.
(e) If the court concludes that the defendant suffers from a serious mental illness as defined in paragraph (c)(iii) of this subsection and that treatment is available for such serious mental illness, then the court may order, as a condition of the defendant's release on bail or on the defendant's own recognizance or as a condition of probation, that the defendant undergo treatment consistent with the plan of treatment, subject to modification of the plan of treatment by the court. If the plan of treatment is modified in any material term, the department of health and welfare shall notify the court in a timely manner stating the reasons for the modification and informing the court as to the clinical alternatives available to the defendant.
(f) If treatment is ordered, all treatment shall be performed by a provider approved by the department of health and welfare.
(g) The expenses of all mental health examinations and/or treatment provided or ordered under this section shall be borne by the department of health and welfare. The department of health and welfare shall be entitled to any payment received by the defendant or to which he may be entitled from any public or private source available to the department of health and welfare for the service provided to the defendant. The department of health and welfare is authorized to promulgate rules for a schedule of fees to be charged to defendants for the mental health examinations and treatments provided to the defendants based upon the actual costs of such services and the ability of a defendant to pay. The department of health and welfare shall use the state approved financial eligibility form and reimbursement schedule as set forth in IDAPA 16.07.01.

(4) Unless otherwise ordered by the court, if the defendant is in treatment for a substance use disorder or mental illness, any substance use disorder assessment required under subsection (2) of this section or mental health examination required under subsection (3) of this section need not be performed while the defendant is in such treatment. In such circumstances, the court may make such order as it finds appropriate to facilitate the completion of the sentencing process or other proceeding before the court, including providing for the assessment and treatment records to be included in the presentence investigation report or other report to the court.

(5) Any substance use disorder assessment including any recommended level of care or mental health examination including any plan of treatment shall be delivered to the court, the defendant and the prosecuting attorney prior to any sentencing hearing or probation revocation hearing.

(6) A substance use disorder assessment prepared pursuant to the provisions of this section shall satisfy the requirement of an alcohol evaluation prior to sentencing set forth in section 18-8005(11), Idaho Code, and shall also satisfy the requirement of a substance abuse evaluation prior to sentencing set forth in section 37-2738, Idaho Code.

(7) If the defendant is sentenced to the custody of the board of correction, then any substance use disorder assessment, mental health examination or plan of treatment shall be sent to the department of correction along with the presentence report.

History.

I.C., § 19-2524, as added by 2007, ch. 310, § 1, p. 875; am. 2012, ch. 225, §§ 2, 3, p. 611.

Compiler's Notes. The 2012 amendment, by ch. 225, § 2, added subsection (6), renumbering former subsection (6) as subsection (7) and, in subsection (7), substituted "The expenses of all mental health examinations and treatment provided or" for "The expenses of the assessments and examinations, including any evaluation or recommendations for treatment ordered under subsection (3)(a) of this section, and any treatment" in the first sentence, deleted "assessments" preceding "examinations" twice in the second sentence, substituted "mental health examinations" for "assessments, evaluations" near the end of the second sentence, and added the last sentence.

The 2012 amendment by ch. 225, § 3, rewrote the section heading, which formerly read: "Substance abuse and mental health treatment" and rewrote the section to the extent that a detailed comparison is impracticable.

The abbreviation enclosed in parentheses so appeared in the law as enacted.

Section 4 of S.L. 2012, ch 225 provided: "The provisions of Section 2 of this act shall be null, void and of no force and effect on and after March 1, 2013, and Section 3 of this act shall be in full force and effect on and after March 1, 2013".

ANALYSIS

Competency.
Mental health examination.

Competency.

When mental health is an issue at sentencing, this section provides guidance; while it does not mandate any particular course of treatment or protocol for the mentally ill, it does show an acknowledgement that the truly mentally ill require treatment beyond that given to the average inmate. State v. Delling, 152 Idaho 122, 267 P.3d 709 (2011), cert. denied, — U.S. —, 133 S. Ct. 504, 184 L. Ed. 2d 480 (2012).

Mental Health Examination.

A court possesses discretion to order or decline to order a mental health examination prior to sentencing or at disposition pursuant to this section. The legislature's Statement of Purpose indicates that the statute broadens a court's sentencing options related to treatment for substance abuse or mental health issues. State v. Hanson, 150 Idaho 729, 249 P.3d 1184 (Ct. App. 2011).

CHAPTER 26

SUSPENSION OF JUDGMENT AND SENTENCE AND PAROLE OFFENDERS

19-2601. Commutation, suspension, withholding of sentence — Probation. — Whenever any person shall have been convicted, or enter a plea of guilty, in any district court of the state of Idaho, of or to any crime against the laws of the state, except those of treason or murder, the court in its discretion, may:

1. Commute the sentence and confine the defendant in the county jail, or, if the defendant is of proper age, commit the defendant to the custody of the state department of juvenile corrections; or

2. Suspend the execution of the judgment at the time of judgment or at any time during the term of a sentence in the county jail and place the defendant on probation under such terms and conditions as it deems necessary and expedient; or

3. Withhold judgment on such terms and for such time as it may prescribe and may place the defendant on probation; or

4. Suspend the execution of the judgment at any time during the first three hundred sixty-five (365) days of a sentence to the custody of the state board of correction. The court shall retain jurisdiction over the prisoner for a period of up to the first three hundred sixty-five (365) days or, if the prisoner is a juvenile, until the juvenile reaches twenty-one (21) years of age. During the period of retained jurisdiction, the state board of correction shall be responsible for determining the placement of the prisoner and such education, programming and treatment as it determines to be appropriate. The prisoner will remain committed to the board of correction if not affirmatively placed on probation by the court. In extraordinary circumstances, where the court concludes that it is unable to obtain and evaluate the relevant information within the period of retained jurisdiction, or where the court concludes that a hearing is required and is unable to obtain the defendant's presence for such a hearing within such period, the court may decide whether to place the defendant on probation or release jurisdiction within a reasonable time, not to exceed thirty (30) days, after the period of retained jurisdiction has expired. Placement on probation shall be under such terms and conditions as the court deems necessary and expedient. The court in its discretion may sentence a defendant to more than one (1) period of retained jurisdiction after a defendant has been placed on probation in a case. In no case shall the board of correction or its agent, the department of correction, be required to hold a hearing of any kind with respect to a recommendation to the court for the grant or denial of probation. Probation is a matter left to the sound discretion of the court. Any recommendation

made by the department to the court regarding the prisoner shall be in the nature of an addendum to the presentence report. The board of correction and its agency, the department of correction, and their employees shall not be held financially responsible for damages, injunctive or declaratory relief for any recommendation made to the district court under this section.

5. If the crime involved is a felony and if judgment is withheld as provided in subsection 3. of this section or if judgment and a sentence of custody to the state board of correction is suspended at the time of judgment in accordance with subsection 2. of this section or as provided by subsection 4. of this section and the court shall place the defendant upon probation, it shall be to the board of correction, to a county juvenile probation department, or any other person or persons the court, in its discretion, deems appropriate.

6. If the crime involved is a misdemeanor, indictable or otherwise, or if the court should suspend any remaining portion of a jail sentence already commuted in accordance with subsection 1. of this section, the court, if it grants probation, may place the defendant on probation. If the convicted person is a juvenile held for adult criminal proceedings, the court may order probation under the supervision of the county's juvenile probation department.

7. The period of probation ordered by a court under this section under a conviction or plea of guilty for a misdemeanor, indictable or otherwise, may be for a period of not more than two (2) years; provided that the court may extend the period of probation to include the period of time during which the defendant is a participant in a problem solving court program and for a period of up to one (1) year after a defendant's graduation or termination from a problem solving court program. Under a conviction or plea of guilty for a felony the period of probation may be for a period of not more than the maximum period for which the defendant might have been imprisoned.

History.

I.C., § 19-2601, as added by 1972, ch. 336, § 9, p. 844; am. 1972, ch. 381, § 16, p. 1102; am. 1973, ch. 292, § 1, p. 615; am. 1974, ch. 68, § 1, p. 1149; am. 1980, ch. 176, § 1, p. 374; am. 1994, ch. 33, § 1, p. 50; am. 1995, ch. 247, § 1, p. 817; am. 1996, ch. 418, § 1, p. 1388; am. 1998, ch. 67, § 1, p. 260; am. 2000, ch. 246, § 1, p. 686; am. 2005, ch. 186, § 1, p. 572; am. 2010, ch. 350, § 1, p. 913; am. 2012, ch. 46, § 1, p. 140.

Compiler's Notes. The 2010 amendment, by ch. 350, in subsection (4), in the first two sentences, substituted "three hundred sixty-five (365) days" for "one hundred eighty (180) days"; inserted "a period of up to" in the second sentence; added the third sentence; and in the fifth sentence, deleted "one hundred eighty (180) day" preceding the first and last occurrence of "period."

The 2012 amendment, by ch. 46, substituted "two (2) years; provided that the court may extend the period of probation to include the period of time during which the defendant is a participant in a problem solving court program and for a period of up to one (1) year after a defendant's graduation or termination from a problem solving court program. Under a conviction" for "two (2) years; and under a conviction" in subsection (7).

Cited in: State v. Johnson, 152 Idaho 56, 266 P.3d 1161 (Ct. App. 2011).

ANALYSIS

Appeals.
Conditions of probation.
—Credit for time served.
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Credit.
Extension.
Persistent violators.
Plea agreement violation.
Probation.
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Restitution.
—Modification.
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Appeals.

Under Idaho App. R. 21, the appellate court had no jurisdiction to address the merits of defendant's claim of error and dismissed it because the appeal was not timely filed. Defendant incorrectly relied upon the date of entry of the final order of probation, rather than the date of entry of the temporary order of probation, in calculating the time available for filing notice of appeal. State v. Schultz, 147 Idaho 675, 214 P.3d 661 (Ct. App. 2009).

Conditions of Probation.

Defendant was not required to pay sexual assault victim restitution for tuition and supplies that she had forfeited when she dropped out of a massage therapy program because she was afraid that another similar incident would occur. State v. Gonzales, 144 Idaho 775, 171 P.3d 266 (Ct. App. 2007).

—Credit for Time Served.

Defendant had been convicted of DUI, but his sentence had been withheld pending probation. After his third probation violation, his sentence was commuted to a nine-month jail sentence, with no express mention of credit for pre-sentence incarceration. Defendant was, therefore, entitled to credit for all time served pursuant to probation violations, and trial court was without authority to amend the judgment to deny him any portion of that credit. State v. Allen, 144 Idaho 875, 172 P.3d 1150 (Ct. App. 2007).

Consecutive Sentences.

Trial court possessed authority to impose successive two-year periods of probation for each of defendant's misdemeanor convictions, regardless of the length of the suspended jail sentences. State v. Horejs, 143 Idaho 260, 141 P.3d 1129 (Ct. App. 2006).

In prosecution of defendant on probation, magistrate had authority to execute the previously suspended sentence, as well as impose two suspended sentences and two consecutive terms of probation for the current offenses. State v. Clapper, 143 Idaho 338, 144 P.3d 43 (Ct. App. 2006).

Credit.

While a habeas petitioner's incarceration during retained jurisdiction constituted service on a sentence, it was not to be credited against all of the sentences, as it was treated as any other period of confinement within the custody of the board of correction. Lake v. Newcomb, 140 Idaho 190, 90 P.3d 1272 (Ct. App. 2004).

Extension.

Plain language of subsection (4) requires that a thirty-day extension of jurisdiction over the defendant has to be ordered by the district court within the 180-day time period of retained jurisdiction. State v. Petersen, 149 Idaho 808, 241 P.3d 981 (Ct. App. 2010).

Persistent Violators.

Although the jury found defendant to be a persistent violator subject to a sentence enhancement under § 19-2514 because of his three prior felony DUI convictions, he was required to serve only a unified sentence of at least five years, which could, in the district court's discretion, be suspended pursuant to this section. The legislature has not exercised its authority, under Idaho Const. art. V, § 13, to preclude this section's alternative sentencing options, and § 19-2513 has not implicitly amended § 19-2514 to mandate a minimum fixed sentence. State v. Toyne, 151 Idaho 779, 264 P.3d 418 (Ct. App. 2011).

Plea Agreement Violation.

State's recommendation of the longest permissible underlying sentence in defendant's case for aggravated assault in violation of §§ 18-901 and 18-905 was not inconsistent with the recommendation of retained jurisdiction under this section and did not amount to a recommendation against retained jurisdiction; therefore, no breach of the plea agreement was shown. State v. Jones, 141 Idaho 673, 115 P.3d 764 (Ct. App. 2005).

Probation.

Based upon the broad language of subsection (2), the district court did not exceed its authority in ordering defendant to pay child support as a condition of his probation since requiring defendant to assume financial responsibility for his child would help impress upon him the seriousness of his actions and would require him to pay a portion of the debt he owed society or at least minimize any further debt to society, and it would facilitate rehabilitation by confronting him with the consequences of his criminal conduct and forcing him to accept financial responsibility. State v. Jeffs, 140 Idaho 466, 95 P.3d 84 (Ct. App. 2004).

When a court enters an order withholding judgment and placing the defendant on probation pursuant to subsection (3), no sentence is then imposed and no judgment of conviction is entered. State v. Woodbury, 141 Idaho 547, 112 P.3d 835 (Ct. App. 2005).

Relinquishment of Jurisdiction.

Consideration of defendant's indigence in denying him probation did not violate the U.S. Constitution's Due Process and Equal Protection Clauses because (1) the mere possibility of receiving probation after a period of retained jurisdiction was not a liberty interest sufficient to require the procedural due process of a hearing before a court relinquished jurisdiction; (2) the state had a strong and legitimate interest in disallowing probation

for an offender if the offender could not be adequately supervised or if his conditional release would present an undue risk to society; (3) the denial of probation for defendant due to his indigence was directly and rationally related to this state interest; and (4) defendant had not suggested any alternative method by which the trial court could have insured that he would have adequate housing and treatment, nor other means to minimize the risk of reoffense. State v. Braaten, 144 Idaho 606, 167 P.3d 357 (Ct. App. 2007).

Restitution.

Defendant was not entitled to a jury trial to determine the amount of restitution under Idaho Const. art. I, § 7. First, if the restitution was rooted in equity, no right to a jury trial applied, and second, this section and § 19-5304 both allow a court to award restitution without a jury trial. Idaho Const. art. I, § 22, preserving a criminal victim's statutory rights, including the restitution right, does not explicitly provide for a right to a jury trial. State v. Straub, — Idaho —, 292 P.3d 273 (2013).

—Modification.

A restitution payment schedule that set arbitrary, prospective increases without re-evaluating a probationer's current resources, needs, and earning ability at the time those increases were to take effect was an abuse of discretion. State v. Wakefield, 145 Idaho 270, 178 P.3d 635 (Ct. App. 2007).

Retention of Jurisdiction.

Where retained jurisdiction had expired and divested the district court of jurisdiction to enter orders relating to defendant's sentence, the order revoking probation and ordering into execution the previously imposed sentence for burglary had to be affirmed. State v. Diggie, 140 Idaho 238, 91 P.3d 1142 (Ct. App. 2004).

Sentence imposed of a unified five-year term with three and one-half years determinate for defendant's aggravated assault conviction under §§ 18-901 and 18-905 was not excessive. Defendant had a substantial criminal record and the record on appeal did not support defendant's claim that the trial court disregarded mitigating factors, and there was also sufficient evidence for the trial court to find that defendant was not suitable for retained jurisdiction or probation, pursuant to this section, and thus the trial court did not err in finding that retained jurisdiction was inappropriate and that a prison sentence was necessary. State v. Jones, 141 Idaho 673, 115 P.3d 764 (Ct. App. 2005).

District court's judgment suspending defendant's sentence and placing him on probation was void where it occurred more than 180 [now 365] days after sentencing. State v. Taylor, 142 Idaho 30, 121 P.3d 961 (2005).

The 180-day time period of retained jurisdiction in this section begins to run when the sentence is imposed, despite whether the defendant was transported immediately to the rider facility or whether there was some delay. State v. Petersen, 149 Idaho 808, 241 P.3d 981 (Ct. App. 2010).

The principal purpose of retained jurisdiction is to evaluate the defendant for his or her receptiveness to rehabilitation or probation. State v. Petersen, 149 Idaho 808, 241 P.3d 981 (Ct. App. 2010).

District court correctly interpreted subsection (4) when, in denying defendant's motion for reduction of his sentence, it determined that it did not have the authority to order a second period of retained jurisdiction because defendant had not been placed on an intervening period of probation. State v. Gill, 150 Idaho 183, 244 P.3d 1269 (Ct. App. 2010).

Subsection (4) requires that a defendant be placed on probation and subsequently be found to have violated that probation before a district court may order a second period of retained jurisdiction. State v. Urrabazo, 150 Idaho 158, 244 P.3d 1244 (2010), overruled on other grounds, Verska v. St. Alphonsus Med. Ctr., 151 Idaho 889, 265 P.3d 502 (2011).

Because the district court failed to place defendant on a legitimate intervening period of probation as contemplated by subsection (4), it did not have the authority to order a second rider, and, consequently, defendant was under the affirmative control of the department of correction upon expiration of the initial 180-day (now 365-day) period of retained jurisdiction, on February 22, 2010; therefore, the court's subsequent order of July 15, 2010, purporting to suspend defendant's sentence and place him on probation for five years was void for want of subject matter jurisdiction. State v. Dicksen, 152 Idaho 70, 266 P.3d 1175 (Ct. App. 2011).

Where the district court retains jurisdiction under subsection (4), the sentence is executed upon the transfer of the defendant to the board of correction, and the extension of "jurisdiction" is limited to jurisdiction for the court to suspend the sentence of imprisonment and to impose terms of probation. State v. Steelsmith, — Idaho —, 288 P.3d 132 (Ct. App. 2012).

Withheld "Judgment."

Where defendant was convicted of grand theft after entering a welding business with a key that had been entrusted to him by the business owner's sister and stealing welding machinery, the trial court did not abuse its discretion in refusing to withhold judgment under subsection (3), because the trial judge determined that a withheld judgment would

be inappropriate based upon the nature of the crime, the breach of trust, and defendant's criminal record. State v. Rollins, 152 Idaho 106, 266 P.3d 1211 (Ct. App. 2011).

A.L.R. Validity of condition of probation, supervised release, or parole restricting computer use or internet access. 4 A.L.R.6th 1.

Defendant's right to credit for time spent in halfway house, rehabilitation center, or similar restrictive environment as condition of pretrial release. 46 A.L.R.6th 63.

Propriety of requirement, as condition of probation, that defendant refrain from use of intoxicants. 46 A.L.R.6th 241.

19-2602. Violation of probation — Arrest.

Cited in: State v. Bosier, 149 Idaho 664, 239 P.3d 462 (Ct. App. 2010); State v. Ligon-Bruno, 152 Idaho 274, 270 P.3d 1059 (Ct. App. 2011). =alr Sufficiency of hearsay evidence in probation revocation hearings. 21 A.L.R.6th 771.

19-2603. Pronouncement and execution of judgment after violation of probation.

Cited in: State v. Woodbury, 141 Idaho 547, 112 P.3d 835 (Ct. App. 2005).

Analysis

Credit for time served.
Revocation of probation.

Credit for Time Served.

Trial court erred in denying defendant's motion for credit for time served as to the period he was awaiting disposition of a probation violation where he would have been eligible for release on bond in the new case if not for an agent's warrant, which authorized the jail to detain him; the agent's warrant was the functional equivalent of a bench warrant, and defendant was entitled to credit for time served. State v. Covert, 143 Idaho 169, 139 P.3d 771 (Ct. App. 2006).

Defendant had been convicted of DUI, but his sentence had been withheld pending probation. After his third probation violation, his sentence was commuted to a nine-month jail sentence, with no express mention of credit for pre-sentence incarceration. Defendant was, therefore, entitled to credit for all time served pursuant to probation violations, and trial court was without authority to amend the judgment to deny him any portion of that credit. State v. Allen, 144 Idaho 875, 172 P.3d 1150 (Ct. App. 2007).

Defendant was entitled to credit on his possession of methamphetamine sentence for his incarceration from the date of the service of a bench warrant until the entry of an order revoking probation, because (1) when defendant was arrested on a bench warrant for a probation violation and the probation was revoked, the time of defendant's sentence was to count from the date of service of such bench warrant, and (2) while credit was applied to defendant's delivery of methamphetamine sentence, granting credit on each sentence from the date the warrant was served would not give defendant credit against his prison sentences for more time than he actually served in the county jail because concurrent sentences were imposed. State v. McCarthy, 145 Idaho 397, 179 P.3d 360 (Ct. App. 2008).

Revocation of Probation.

Where defendant did not timely file his notice of appeal of the order revoking his probation within 42 days of the order, the late filing of a motion for a reduction of sentence more than 14 days after the order did not terminate the running of the time for appeal. The original judgment revoking probation remained in full force and could be executed. The supreme court of Idaho could not hear defendant's untimely appeal of the order revoking his probation. State v. Thomas, 146 Idaho 592, 199 P.3d 769 (2008).

Defendant's revocation of probation on driving under the influence charges was appropriate where defendant continued to drink alcohol after he was placed on probation and failed to obtain a prescription to help with his substance abuse issues. State v. Hanson, 150 Idaho 729, 249 P.3d 1184 (Ct. App. 2011).

Where defendant admitted numerous probation violations, including failing to complete his first required treatment program, using medications contrary to the manner prescribed by a physician, failing to obtain a valid driver's license, being terminated from a second required treatment program due to poor attendance and violations of his behavior contract, and having contact with another probationer, and defendant was given two opportunities to rehabilitate in the community, but continued to violate his probation, the district court did not abuse its discretion by revoking defendant's probation and ordering execution of his original sentence. State v. Morgan, — Idaho —, 288 P.3d 835 (Ct. App. 2012).

A.L.R. Sufficiency of hearsay evidence in probation revocation hearings. 21 A.L.R.6th 771.

19-2604. Discharge of defendant — Amendment of judgment. — (1) If sentence has been imposed but suspended, or if sentence has been withheld, upon application of the defendant and upon satisfactory showing that:

(a) The court did not find, and the defendant did not admit, in any probation violation proceeding that the defendant violated any of the terms or conditions of probation; or

(b) The defendant has successfully completed and graduated from an authorized drug court program or mental health court program and during any period of probation that may have been served following such graduation, the court did not find, and the defendant did not admit, in any probation violation proceeding that the defendant violated any of the terms or conditions of probation;

the court may, if convinced by the showing made that there is no longer cause for continuing the period of probation, and if it be compatible with the public interest, terminate the sentence or set aside the plea of guilty or conviction of the defendant, and finally dismiss the case and discharge the defendant or may amend the judgment of conviction from a term in the custody of the state board of correction to "confinement in a penal facility" for the number of days served prior to suspension, and the amended judgment may be deemed to be a misdemeanor conviction. This shall apply to the cases in which defendants have been convicted and granted probation by the court before this law goes into effect, as well as to cases which arise thereafter. The final dismissal of the case as herein provided shall have the effect of restoring the defendant to his civil rights.

(2) If sentence has been imposed but suspended for any period during the first three hundred sixty-five (365) days of a sentence to the custody of the state board of correction, and the defendant placed upon probation as provided in subsection 4. of section 19-2601, Idaho Code, upon application of the defendant, the prosecuting attorney, or upon the court's own motion, and upon satisfactory showing that:

(a) The court did not find, and the defendant did not admit, in any probation violation proceeding that the defendant violated any of the terms or conditions of probation; or

(b) The defendant has successfully completed and graduated from an authorized drug court program or mental health court program and during any period of probation that may have been served following such graduation, the court did not find, and the defendant did not admit, in any probation violation proceeding that the defendant violated any of the terms or conditions of probation;

the court may amend the judgment of conviction from a term in the custody of the state board of correction to "confinement in a penal facility" for the number of days served prior to suspension, and the amended judgment may be deemed to be a misdemeanor conviction.

(3)(a) In addition to the circumstances in which relief from a felony conviction may be granted under subsections (1) and (2) of this section, a defendant who has been convicted of a felony and who has been discharged from probation may apply to the sentencing court for a reduction

of the conviction from a felony to a misdemeanor as provided in this subsection.

(b) If less than five (5) years have elapsed since the defendant's discharge from probation, the application may be granted only if the prosecuting attorney stipulates to the reduction.

(c) If at least five (5) years have elapsed since the defendant's discharge from probation, and if the defendant was convicted of any of the following offenses, the application may be granted only if the prosecuting attorney stipulates to the reduction:

(i) Assault with intent to commit a serious felony (18-909, 18-915, Idaho Code);

(ii) Battery with intent to commit a serious felony (18-911, 18-915, Idaho Code);

(iii) Enticing of children (18-1509, Idaho Code);

(iv) Murder in the first or second degree (18-4003, Idaho Code);

(v) Voluntary manslaughter (18-4006(1), Idaho Code);

(vi) Assault with intent to commit murder (18-4015, Idaho Code);

(vii) Administering poison with intent to kill (18-4014, Idaho Code);

(viii) Kidnapping in the first degree (18-4502, Idaho Code);

(ix) Robbery (18-6501, Idaho Code);

(x) Trafficking (37-2732B, Idaho Code);

(xi) Threats against state officials of the executive, legislative or judicial branch, felony (18-1353A, Idaho Code);

(xii) Unlawful discharge of a firearm at a dwelling house, occupied building, vehicle or mobile home (18-3317, Idaho Code);

(xiii) Cannibalism (18-5003, Idaho Code);

(xiv) Unlawful use of destructive device or bomb (18-3320, Idaho Code);

(xv) Attempt, conspiracy or solicitation to commit any of the crimes described in paragraph (c)(i) through (xiv).

(d) The decision as to whether to grant such an application shall be in the discretion of the district court, provided that the application may be granted only if the court finds that:

(i) The defendant has not been convicted of any felony committed after the conviction from which relief is sought;

(ii) The defendant is not currently charged with any crime;

(iii) The reduction in sentence would be compatible with the public interest; and

(iv) In those cases where the stipulation of the prosecuting attorney is required under paragraph (b) or (c) of this subsection, the prosecuting attorney has so stipulated.

(e) If the court grants the application, the court shall reduce the felony conviction to a misdemeanor and amend the judgment of conviction for a term in the custody of the state board of correction to "confinement in a penal facility" for the number of days served prior to the judgment of conviction.

(4) Subsections (2) and (3) of this section shall not apply to any judgment of conviction for a violation of any offense requiring sex offender registration as set forth in section 18-8304, Idaho Code. A judgment of conviction for a

violation of any offense requiring sex offender registration as set forth in section 18-8304, Idaho Code, shall not be subject to dismissal or reduction under this section. A conviction for the purposes of this chapter means that the person has pled guilty or has been found guilty, notwithstanding the form of the judgment or withheld judgment.

History.

1915, ch. 104, part of § 1, p. 245; reen. C.L., § 8002; am. 1919, ch. 134, § 2, p. 429; C.S., § 9046; I.C.A., § 19-2506; am. 1951, ch. 99, § 1, p. 224; am. 1970, ch. 143, § 4, p. 425; am. 1971, ch. 97, § 2, p. 210; am. 1989, ch. 305, § 1, p. 759; am. 2006, ch. 104, § 1, p. 287; am. 2006, ch. 157, § 1, p. 473; am. 2010, ch. 350, § 2, p. 913; am. 2011, ch. 187, § 1, p. 537; am. 2013, ch. 256, § 1, p. 631.

Compiler's Notes. This section was amended by two 2006 acts which appear to be compatible and have been compiled together.

The 2006 amendment, by ch. 104, inserted "or has successfully completed and graduated from an authorized drug court program or mental health court program and has at all times complied with the terms and conditions of probation during any period of probation that may have been served following such graduation" in subsections (1) and (2).

The 2006 amendment, by ch. 157, rewrote subsection (3), which formerly read: "Subsection 2 of this section shall not apply to any judgment of conviction for a violation of the provisions of sections 18-1506, 18-1507 or 18-1508, Idaho Code. A judgment of conviction for a violation of the provisions of any section listed in this subsection shall not be expunged from a person's criminal record."

The 2010 amendment, by ch. 350, in the first sentence in subsection (2), inserted "for any period" and substituted "three hundred sixty-five (365) days" for "one hundred eighty (180) days."

The 2011 amendment, by ch. 187, rewrote subsections (1) and (2), revising provisions relating to discharge of defendant and amendment of judgment.

The 2013 amendment, by ch. 256, inserted present subsection (3); redesignated former subsection (3) as subsection (4); and added "and (3)" near the beginning of subsection (4).

Cited in: State v. Woodbury, 141 Idaho 547, 112 P.3d 835 (Ct. App. 2005); State ex rel. City of Sandpoint v. Whitt, 146 Idaho 292, 192 P.3d 1116 (Ct. App. 2008); United States v. Bays, 589 F.3d 1035 (9th Cir. 2009).

ANALYSIS

Constitutionality.

Retroactive application of 2006 amended version of this section did not violate the constitutional prohibition against ex post facto laws under U.S. Const., Art. I, § 9, cl. 3, and Idaho Const., Art. I, § 16, because the law requiring a sex offender to register was not punitive in nature, but was remedial. State v. Hardwick, 150 Idaho 580, 249 P.3d 379 (2011).

Construction with Other Laws.

Even though defendant's guilty plea for violating § 18-6608 was set aside and dismissed under subsection (1) of this section, he still had to meet the requirements of § 18-8310 in order to be released from the sex offender registry; because he could not do so, his motion for release from the registry was properly denied. State v. Robinson, 143 Idaho 306, 142 P.3d 729 (2006).

Expungement.

Idaho law authorized no type of expungement of a criminal record for adult offenders other than that authorized in this section and it would be illogical to conclude that a legislature that prohibited the reduction of convictions for sex offenses against children from felonies to misdemeanors under subsection (2) would nevertheless authorize complete dismissal of such charges under subsection (1); thus, where the trial court's order purported to dismiss the charge against defendant without vacating the conviction, such an outcome could not be legally accomplished. State v. Dorn, 140 Idaho 404, 94 P.3d 709 (Ct. App. 2004).

Court properly held that it was without authority to expunge defendant's record from the National Crime Information Center database. Even though court dismissed the case against defendant for complying with terms and conditions of probation, it did not have authority to take further actions, such as eliminating each and every reference to the case in an official record. State v. Parkinson, 144 Idaho 825, 172 P.3d 1100 (2007), overruled on other grounds, Verska v. St. Alphonsus Med. Ctr., 151 Idaho 889, 265 P.3d 502 (2011).

Persistent Violators.

Although defendant's 2004 driving under the influence (DUI) offense had been dis-

missed under this section and the guilty plea set aside, the 2004 DUI could be used for penalty enhancement purposes, as the form of the judgment and the set aside guilty plea did not exempt defendant from the felony enhancement provisions in § 18-8005(6). State v. Reed, 149 Idaho 901, 243 P.3d 1089 (Ct. App. 2010).

Public Interest.

Although defendant had no other convictions, had a productive work history, and appeared to be in compliance with the terms of probation, a guilty plea to lewd conduct in 1988 was not required to be dismissed. Dismissal was not warranted based on a 1988 psychosexual evaluation and a doctor's report. State v. Dieter, — Idaho —, 291 P.3d 413 (2012).

Retained Jurisdiction.

In a murder case, the trial court erred in setting aside a prior order granting withdrawal of defendant's guilty plea and dismissing the grand theft case against him as the trial court lacked jurisdiction two years after that erroneous dismissal and the record did not show the most exceptional circumstances that would have justified judicial exercise of the inherent power to set aside a final judgment. State v. Griffith, 140 Idaho 616, 97 P.3d 483 (Ct. App. 2004).

A.L.R. Judicial expunction of criminal record of convicted adult in absence of authorizing statute. 68 A.L.R.6th 1.

Judicial expunction of criminal record of convicted adult under statute — General principles, and expunction of criminal records under statutes providing for such relief where criminal proceeding is terminated in favor of defendant, upon completion of probation, upon suspended sentence, and where expungement relief predicated upon type, and number, of offenses. 69 A.L.R.6th 1.

Judicial expunction of criminal record of convicted adult under statute — Expunction under statutes addressing "first offenders" and "innocent persons," where conviction was for minor drug or other offense, where indictment has not been presented against accused or accused has been released from custody, and where court considered impact of *nolle prosequi,* partial dismissal, pardon, rehabilitation, and lesser-included offenses. 70 A.L.R.6th 1.

19-2608. Payment of court ordered tests of breath or bodily fluids. — Whenever a court orders testing of breath or bodily fluids as a condition of probation, such costs for the tests shall be paid for by the probationer in addition to any supervision fee authorized under section 20-225 or 31-3201D, Idaho Code, to the agency providing the testing, provided the court may waive this requirement upon a showing of cause.

History.

I.C., § 19-2608, as added by 1994, ch. 248, § 1, p. 792; am. 2012, ch. 109, § 1, p. 299.

Compiler's Notes. The 2012 amendment, by ch. 109, inserted "in addition to any supervision fee authorized under section 20-225 or 31-3201D, Idaho Code" and deleted "governmental" preceding "agency."

CHAPTER 27

EXECUTION

SECTION.

19-2703. Execution of judgment of imprisonment.

Concurrent Sentencing.

Sentence, if a court did not specify whether a sentence was to be served concurrently with or consecutive to another sentence, would be concurrent because, in the absence of a specification that it was to be consecutive, the

defendant's service of the sentence would begin immediately. State v. Bosier, 149 Idaho 664, 239 P.3d 462 (Ct. App. 2010).

19-2715. Ministerial actions relating to stays of execution, resetting execution dates, and order for execution of judgment of death. — (1) Hereafter, no further stays of execution shall be granted to persons sentenced to death except that a stay of execution shall be granted during an appeal taken pursuant to section 19-2719, Idaho Code, during the automatic review of judgments imposing the punishment of death provided by section 19-2827, Idaho Code, by order of a federal court or as part of a commutation proceeding pursuant to section 20-240, Idaho Code.

(2) Upon remittitur or mandate after a sentence of death has been affirmed, the state shall apply for a warrant from the district court in which the conviction was had, authorizing execution of the judgment of death. Upon such application, the district court shall set a new execution date not more than thirty (30) days thereafter.

(3) If a stay of execution is granted pursuant to subsection (1) of this section and as a result, no execution takes place on the date set by the district court, upon termination of the stay, the state shall apply for another warrant and upon such application, the district court shall set a new execution date not more than thirty (30) days thereafter.

(4) If for any reason, other than those set forth in subsection (1) of this section, a judgment of death has not been executed, and it remains in force, the state shall apply for another warrant. Upon such application, the district court may inquire into the facts, and if no legal reason exists against the execution of the judgment, must make an order that the warden execute the judgment at a special specified time. The warden must execute the judgment accordingly.

(5) Action of the district court under this section is ministerial only. No hearing shall be required for setting a new execution date and the court shall inquire only into the fact of an existing death sentence and the absence of a valid stay of execution.

(6) For purposes of this section, the phrase "stay of execution" shall refer to a temporary postponement of an execution as a result of a court order or an order of the governor postponing the execution while a petition for commutation is pending.

History.

Cr. Prac. 1864, §§ 465, 466, p. 269; R.S., § 8019; am. 1899, p. 340, § 4; reen. R.C. & C.L., § 8019; C.S., § 9062; I.C.A., § 19-2615; am. 1984, ch. 159, § 6, p. 386; am. 2012, ch. 84, § 1, p. 241.

Compiler's Notes. The 2012 amendment, by ch. 84, added "by order of a federal court or as part of a commutation proceeding pursuant to section 20-240, Idaho Code" at the end of subsection (1); rewrote subsection (2), which formerly read, "Upon remittitur after a sentence of death has been affirmed, the district court shall set a new execution date not more than thirty (30) days thereafter"; added subsection (3), redesignating former subsections (3) and (4) as present subsections (4) and (5); in subsection (4), inserted "other than those set forth in subsection (1) of this section" and "state shall apply for another warrant. Upon such application, the district" and deleted "in which the conviction was had, on the application of the prosecuting attorney, must order the defendant to be brought before it, or if he is at large a warrant for his apprehension may be issued. Upon the defendant being brought before the court, the court" following "district court" in the second sentence; and added subsection (6).

Section 2 of S.L. 2012, ch. 84 declared an emergency and made this section retroactive to January 1, 2012. Approved March 20, 2012.

ANALYSIS

Hearing not required.
Subsection (4).

Hearing Not Required.

The legislature intentionally removed from this section any requirement for a hearing from the process of issuing or carrying out a death warrant; defendant received due process prior to the signing of the death warrant, and the court did not violate defendant's due process rights by issuing an ex parte death warrant without defendant and his counsel present. State v. Leavitt, — Idaho —, 280 P.3d 169 (2012).

Subsection (4).

Subsection (4) did not apply where defendant conceded that no stay of execution was in place and that there was an existing judgment of death; no further inquiry by the court was required. State v. Leavitt, — Idaho —, 280 P.3d 169 (2012).

19-2716. Infliction of death penalty. — The punishment of death shall be inflicted by continuous, intravenous administration of a lethal quantity of a substance or substances approved by the director of the Idaho department of correction until death is pronounced by a coroner or a deputy coroner. The director of the Idaho department of correction shall determine the procedures to be used in any execution. This act shall apply to all executions carried out on and after the effective date of this enactment, irrespective of the date sentence was imposed.

History.

Cr. Prac. 1864, § 467, p. 269; R.S., R.C., & C.L., § 8020; C.S., § 9063; I.C.A., § 19-2616; am. 1978, ch. 70, § 1, p. 140; am. 1982, ch. 257, § 1, p. 668; am. 2009, ch. 81, § 1, p. 228.

Compiler's Notes. The phrase "the effective date of this enactment", in the last sentence, appears in S.L. 1982, ch. 257, which was effective March 31, 1982.

The 2009 amendment, by ch. 81, rewrote the section, giving the director of the department of correction more discretion in the method of carrying out the death penalty and eliminating execution by firing squad.

A.L.R. Substantive challenges to propriety of execution by lethal injection in state capital proceedings. 21 A.L.R.6th 1.

Validity, construction, and operation of Federal Death Penalty Act, 18 U.S.C.A. §§ 3591 et seq. 195 A.L.R. Fed. 1.

19-2716A. Practice of medicine and possession of controlled substances — Exemption — Exceptions to governmental liability. — (1) Notwithstanding any other provision of law, infliction of the punishment of death in the manner required by section 19-2716, Idaho Code, shall not be construed as the practice of medicine. The director of the department of correction and all persons authorized by him to participate in an execution, as provided in section 19-2716, Idaho Code, shall be exempt from all laws, rules and regulations governing the practice of medicine.

(2) For the purposes of carrying out the provisions of section 19-2716, Idaho Code, any pharmacy, prescriber, manufacturer, wholesale distributor or other entity authorized by law to possess controlled substances may distribute controlled substances to the director or his designees and shall not be subject to criminal or civil liability for the death of the condemned person.

(3) For the purposes of carrying out the provisions of section 19-2716, Idaho Code, the director and his designees may obtain, possess, store and administer controlled substances and are exempt from all laws, rules and regulations governing pharmacies and controlled substances, notwithstanding any other provision of law. Any employee of the state of Idaho partici-

pating in an execution pursuant to section 19-2716, Idaho Code, shall be presumed to be acting within the course and scope of his employment and without malice or criminal intent for purposes of section 6-903, Idaho Code. Any employee, agent or contractor of the state of Idaho participating in an execution pursuant to section 19-2716, Idaho Code, shall not be subject to criminal or civil liability for the death of the condemned person.

History.
I.C., § 19-2716A, as added by 2012, ch. 85, § 1, p. 242.

Compiler's Notes. Section 2 of S.L. 2012, ch. 85 declared an emergency and made this section retroactive to January 1, 2012. Approved March 20, 2012.

19-2718. Return of death warrant. — After the execution, the executioner shall make a return upon the death warrant to the district court, showing the time, mode and manner in which it was executed.

History.
R.S., § 8022; am. 1899, p. 340, § 6; reen. R.C. & C.L., § 8022; C.S., § 9065; I.C.A., § 19-2618; am. 1941, ch. 150, § 3, p. 303; am. 2012, ch. 83, § 1, p. 240.

Compiler's Notes. The 2012 amendment, by ch. 83, substituted "shall make" for "must make" and inserted "to the district court".

Section 2 of S.L. 2012, ch. 83 declared an emergency and made this section retroactive to January 1, 2012. Approved March 20, 2012.

19-2719. Special appellate and post-conviction procedure for capital cases — Automatic stay. — The following special procedures shall be interpreted to accomplish the purpose of eliminating unnecessary delay in carrying out a valid death sentence.

(1) When the punishment of death is imposed the time for filing an appeal shall begin to run when the death warrant is filed.

(2) The death warrant shall not be filed until forty-two (42) days after the judgment imposing the death sentence has been filed, or, in the event a post-conviction challenge to the conviction or sentence is filed, until the order deciding such post-conviction challenge is filed.

(3) Within forty-two (42) days of the filing of the judgment imposing the punishment of death, and before the death warrant is filed, the defendant must file any legal or factual challenge to the sentence or conviction that is known or reasonably should be known.

(4) Any remedy available by post-conviction procedure, habeas corpus or any other provision of state law must be pursued according to the procedures set forth in this section and within the time limitations of subsection (3) of this section. The special procedures for fingerprint or forensic DNA testing set forth in sections 19-4901(a)(6) and 19-4902(b) through (g), Idaho Code, are fully applicable in capital cases and are subject to the procedures set forth in this section, and must be pursued through a petition filed within the time limitations of subsection (3) of this section or by July 1, 2002, whichever is later.

(5) If the defendant fails to apply for relief as provided in this section and within the time limits specified, he shall be deemed to have waived such claims for relief as were known, or reasonably should have been known. The

courts of Idaho shall have no power to consider any such claims for relief as have been so waived or grant any such relief.

(a) An allegation that a successive post-conviction petition may be heard because of the applicability of the exception herein for issues that were not known or could not reasonably have been known shall not be considered unless the applicant shows the existence of such issues by (i) a precise statement of the issue or issues asserted together with (ii) material facts stated under oath or affirmation by credible persons with first hand knowledge that would support the issue or issues asserted. A pleading that fails to make a showing of excepted issues supported by material facts, or which is not credible, must be summarily dismissed.

(b) A successive post-conviction pleading asserting the exception shall be deemed facially insufficient to the extent it alleges matters that are cumulative or impeaching or would not, even if the allegations were true, cast doubt on the reliability of the conviction or sentence.

(c) A successive post-conviction pleading asserting the exception shall be deemed facially insufficient to the extent it seeks retroactive application of new rules of law.

(6) In the event the defendant desires to appeal from any post-conviction order entered pursuant to this section, his appeal must be part of any appeal taken from the conviction or sentence. All issues relating to conviction, sentence and post-conviction challenge shall be considered in the same appellate proceeding.

(7) If post-conviction challenge is made under this section, questions raised thereby shall be heard and decided by the district court within ninety (90) days of the filing of any motion or petition for relief timely filed as provided by this section. The court shall give first priority to capital cases. In the event the district court fails to act within the time specified, the supreme court of Idaho shall, on its own motion or the motion of any party, order the court to proceed forthwith, or if appropriate, reassign the case to another judge. When the supreme court intervenes as provided, it shall set a reasonable time limit for disposition of the issues before the district court.

(8) The time limit provided in subsection (7) of this section for disposition of post-conviction claims may be extended only upon a showing of extraordinary circumstances which would make it impossible to fairly consider defendant's claims in the time provided. Such showing must be made under oath and the district court's finding that extraordinary circumstances exist for extending the time shall be in writing and shall be immediately reported to the supreme court, which shall at once independently consider the sufficiency of the circumstances shown and determine whether an extension of time is warranted.

(9) When a judgment imposing the penalty of death is filed, the clerk and the reporter shall begin preparation of the transcripts of the trial, and other proceedings, and the clerk's transcript.

(10) When the procedures specified in this section and section 19-2827, Idaho Code, have been carried out and a remittitur issued, and an execution date set as provided by law, the defendant shall be deemed to have exhausted all state remedies.

(11) Any successive petition for post-conviction relief not within the exception of subsection (5) of this section shall be dismissed summarily. Notwithstanding any other statute or rule, the order of dismissal shall not be subject to any motion to alter, amend or reconsider. Such order shall not be subject to any requirement for the giving of notice of the court's intent to dismiss. The order of dismissal shall not be appealable.

(12) A stay of execution while the special appellate procedures specified herein are followed and during the pendency of automatic review of death sentences shall be automatically entered by the clerk of the supreme court at the time the district court transmits to the supreme court the report required by section 19-2827, Idaho Code. If the sentence is upheld, the clerk shall dissolve such stay when the remittitur is filed. Thereafter the district court shall set a new execution date.

History.

I.C., § 19-2719, as added by 1984, ch. 159, § 7, p. 386; am. 1995, ch. 140, § 3, p. 594; am. 2001, ch. 317, § 1, p. 1126; am. 2010, ch. 135, § 1, p. 287.

Compiler's Notes. The 2010 amendment, by ch. 135, substituted "19-4902(b) through (g)" for "19-4902(b) through (f)" in subsection (4).

Cited in: Porter v. State, 140 Idaho 780, 102 P.3d 1099 (2004); Charboneau v. State, 144 Idaho 900, 174 P.3d 870 (2007); Rhoades v. Henry, 611 F.3d 1133 (9th Cir. 2010).

Analysis

Capital cases.
Constitutionality.
DNA evidence.
Filing deadline.
Post-conviction relief.
Time limitation.
Undisclosed evidence.
Unknown claims.
—Burden of proof.
—Reasonable time to raise.

Capital Cases.

In a capital murder case, petitioner's request for postconviction relief on the basis that he was mentally retarded was properly dismissed because he scored an IQ of 72 when he was twenty-eight years old, there was no expert testimony opining what petitioner's IQ probably would have been eleven years earlier, and petitioner was found to be competent to stand trial. In an expert's opinion, petitioner understood the charges against him and their potential consequences and he was capable of assisting in his defense. Pizzuto v. State, 146 Idaho 720, 202 P.3d 642 (2008).

In petitioner's capital murder case, the district court erred in holding that petitioner should have filed his claim for postconviction relief within forty-two days after the Supreme Court released its opinion in *Atkins* because petitioner did not have advance notice of the further clarification of what was a "reasonable time." Pizzuto v. State, 146 Idaho 720, 202 P.3d 642 (2008).

Constitutionality.

This section does not violate the equal protection or due process rights of capital defendants. State v. Payne, 146 Idaho 548, 199 P.3d 123 (2008).

In a capital case, the heightened burden of proof in this section, requiring that petitioner show that the claims in his fourth petition for post-conviction relief were not known and could not have reasonably been known within 42 days of judgment, does not violate petitioners' due process rights. Stuart v. State, 149 Idaho 35, 232 P.3d 813 (2010), cert. denied, — U.S. —, 131 S. Ct. 1472, 179 L. Ed. 2d 313 (2011).

Because this section provides a full opportunity to correct illegal convictions and the opportunity to raise claims later that could not reasonably be known at the time of judgment in a petition for post-conviction relief, any increase in a sentence must necessarily be one of speculative, attenuated risk; thus, this section does not violate the prohibition against ex post facto laws in Idaho Const., art. I, § 16 and U.S. Const,. art. I, § 10, cl. 1. Stuart v. State, 149 Idaho 35, 232 P.3d 813 (2010), cert. denied, — U.S. —, 131 S. Ct. 1472, 179 L. Ed. 2d 313 (2011).

DNA Evidence.

Inmate waived any actual innocence issue because he failed to raise it within 42 days of judgment, as required by this section. Moreover, a district court correctly denied the inmate's motion to amend his petition for post-conviction relief to add a count alleging a *Brady* violation because the inmate had been provided with a copy of a DNA report before trial. Rhoades v. State, 148 Idaho 215, 220 P.3d 571 (2009).

Post-conviction presentation of DNA test results does not require the court to review all of the evidence admitted at trial and submitted in post-conviction proceedings to determine whether it believed an inmate might be innocent of murder. Fields v. State, 151 Idaho 18, 253 P.3d 692 (2011).

Filing Deadline.

This section's forty-two day filing deadline is inadequate, where the petitioner continued to be represented by his original trial counsel during that period. Sivak v. Hardison, 658 F.3d 898 (9th Cir. 2011).

Post-Conviction Relief.

Where the same attorney represented petitioner at the time of his second sentencing hearing and on his resulting appeal, and where that attorney did not raise the possibility of his own ineffectiveness at that time but did question imposition of the death penalty, the ineffectiveness issue, although procedurally defaulted, could still be raised on habeas corpus because, under those circumstances, this section unreasonably restricted petitioner's ability to raise ineffective assistance of counsel claims. Leavitt v. Arave, 383 F.3d 809 (9th Cir. 2004), cert. denied, 545 U.S. 1105, 125 S. Ct. 2540, 162 L. Ed. 2d 277 (2005).

Forty-two day time limitation in subsection (3) of this section, not Idaho Crim. R. 35, applies to claims of illegality of a death sentence. Idaho Crim. R. 35 applies to criminal sentences in general, but is superseded in death sentences by this section. Because Rule 35 did not apply to defendant's challenge to his death sentence, the appellate court dismissed his appeal from the denial of his motion to correct an illegal sentence. State v. Leavitt, 141 Idaho 895, 120 P.3d 283 (2005).

Defendant's post-conviction claims were barred under this section because defendant failed to make a prima facie showing that his claims were not known or could not reasonably have been known when he filed his first petition for post-conviction relief. Pizzuto v. State, 149 Idaho 155, 233 P.3d 86 (2010), cert. denied, — U.S. —, 131 S. Ct. 998, 178 L. Ed. 2d 833 (2011).

A post-conviction claim could not be based on affidavits from two witnesses stating that defendant was not the man they saw in the victim's shop shortly before the murder, because those statement were merely cumulative of their trial testimony, in which they gave descriptions that clearly did not match defendant. Fields v. State, 151 Idaho 18, 253 P.3d 692 (2011).

Time Limitation.

Reasonable time for filing a successive petition for post-conviction relief is forty-two days after the petitioner knew or reasonably should have known of the claim, unless the petitioner shows that there were extraordinary circumstances that prevented him or her from filing the claim within that time period. In that event, it still must be filed within a reasonable time after the claim was known or knowable. Pizzuto v. State, 146 Idaho 720, 202 P.3d 642 (2008).

Undisclosed Evidence.

Petition for post-conviction relief based on an allegation of withheld evidence was dismissed. Information of a detective's close communication with appellant inmate's friend could have been discovered in the 42-day period after the death penalty was imposed, as it was contained in a report provided to the inmate prior to trial. Row v. State, 145 Idaho 168, 177 P.3d 382 (Ct. App. 2008).

Petition for post-conviction relief based on an allegation of withheld evidence was dismissed. Information that a prosecutor and a detective were present at the home of appellant inmate's friend during a recorded conversation was immaterial, irrelevant and had no significance. Therefore, there was no doubt cast on the conviction or sentence. Row v. State, 145 Idaho 168, 177 P.3d 382 (Ct. App. 2008).

Unknown Claims.

—Burden of Proof.

In a capital case, petitioner was required to meet the heightened burden of showing that the claims in his fourth petition for post-conviction relief met this section's "not reasonably known" exception to summary dismissal and to support those claims with admissible evidence; the merits of petitioner's claims could only be reached after the court had found that this section's "not reasonably known" requirement had been met. Stuart v. State, 149 Idaho 35, 232 P.3d 813 (2010), cert. denied, — U.S. —, 131 S. Ct. 1472, 179 L. Ed. 2d 313 (2011).

When more than seven years passed between the appointment of substitute counsel and the filing of a fourth petition for post-conviction relief and petitioner did not show that his claims were not known or could not reasonably have been known, summary dismissal of the petition and dismissal of the subsequent appeal were proper. Stuart v. State, 149 Idaho 35, 232 P.3d 813 (2010), cert. denied, — U.S. —, 131 S. Ct. 1472, 179 L. Ed. 2d 313 (2011).

—Reasonable Time to Raise.

Court's properly denied an additional continuance, to give defendant more time to file his amended petition for postconviction relief, where defendant had nearly 22 months from the date of his sentencing to the date that he filed his second amended petition; defendant

had adequate time to prepare his petition and had already received extensions on the district court's earlier deadlines. State v. Payne, 146 Idaho 548, 199 P.3d 123 (2008).

19-2720. Inquiry into need for new counsel. — After the imposition of a sentence of death, the trial judge should advise the defendant that, upon a particularized showing that there is a reasonable basis to litigate a claim of ineffective assistance of trial counsel, new counsel may be appointed to represent the defendant to pursue such a claim in a post-conviction proceeding. If no such request is made, the trial judge shall certify of record that there are no facts that have come to the court's attention upon which such a claim could reasonably be based or, alternatively, the court may appoint new counsel. No deficiency in the application of the procedure described herein shall be grounds for relief from a judgment of conviction or from a sentence.

History.
I.C., § 19-2719A, as added by 1995, ch. 140, § 4, p. 594; am. and redesig. 2005, ch. 25, § 14, p. 82.

Compiler's Notes. This section was enacted in 1995 as § 19-2719A. Because a similarly numbered code section already existed, the section was redesignated, in brackets, as § 19-2720. That redesignation was made permanent by S.L. 2005, ch. 25, § 14.

CHAPTER 28

APPEALS TO SUPREME COURT

SECTION.

19-2827. Review of death sentences — Preservation of records. — (a) Whenever the death penalty is imposed, and upon the judgment becoming final in the trial court, the sentence shall be reviewed on the record by the Supreme Court of Idaho. The clerk of the trial court, within ten (10) days after receiving the transcript, shall transmit the entire record and transcript to the Supreme Court of Idaho and to the attorney general together with a notice prepared by the clerk and, if a jury has been waived for sentencing, a report prepared by the trial judge setting forth the findings required by section 19-2515(8)(b), Idaho Code, and such other matters concerning the sentence imposed as may be required by the Supreme Court. The notice shall set forth the title and docket number of the case, the name of the defendant and the name and address of his attorney(s), a narrative statement of the judgment, the offense, and punishment prescribed. The report may be in the form of a standard questionnaire prepared and supplied by the Supreme Court of Idaho.

(b) The Supreme Court of Idaho shall consider the punishment as well as any errors enumerated by way of appeal.

(c) With regard to the sentence the court shall determine:

(1) Whether the sentence of death was imposed under the influence of passion, prejudice, or any other arbitrary factor; and

(2) Whether the evidence supports the jury's or judge's finding of a

statutory aggravating circumstance from among those enumerated in section 19-2515, Idaho Code.

(d) Both the defendant and the state shall have the right to submit briefs within the time provided by the court, and to present oral argument to the court.

(e) In addition to its authority regarding correction of errors, the court, with regard to review of death sentences, shall be authorized to:

(1) Affirm the sentence of death; or

(2) Set the sentence aside and remand the case for resentencing by a jury or, if waived, the trial judge.

(f) The sentence review shall be in addition to direct appeal, if taken, and the review and appeal shall be consolidated for consideration.

(g) The Supreme Court shall collect and preserve the records of all cases in which the penalty of death was imposed from and including the year 1975.

History.

I.C., § 19-2827, as added by 1977, ch. 154, § 5, p. 390; am. 1994, ch. 127, § 1, p. 285; am. 2006, ch. 155, § 1, p. 470.

Compiler's Notes. The 2006 amendment, by ch. 155, in subsection (a), inserted "if a jury has been waived for sentencing" and substituted "19-2515(8)(b)" for "19-2515(d)" in the second sentence; inserted "jury's or" in subsection (c)(2); deleted former subsection (c)(3), which read: "Whether the sentence of death is excessive"; and substituted "a jury or, if waived, the trial judge" for "the trial judge based on the record and argument of counsel" in subsection (e)(2).

Cited in: State v. Payne, 146 Idaho 548, 199 P.3d 123 (2008).

CHAPTER 29

IDAHO BAIL ACT

SECTION.

19-2901. Short title. — This chapter shall be known and may be cited as the "Idaho Bail Act."

History.

I.C., § 19-2901, as added by 2009, ch. 90, § 2, p. 259.

Compiler's Notes. Former chapter 19 of Title 29, which comprised the following sections, was repealed by S.L. 2009, ch. 90, § 1.

19-2901. Admission to bail defined. [Cr. Prac. 1864, § 494; R.S., R.C., & C.L., § 8100;

C.S., § 9092; I.C.A., § 19-2801.]

19-2902. Taking of bail defined. [Cr. Prac. 1864, § 495; R.S., R.C., & C.L., § 8101; C.S., § 9093; I.C.A., § 19-2802.]

19-2903. Capital offenses not bailable. [1875, p. 363, § 492; R.S., R.C., & C.L., § 8102; C.S., § 9094; I.C.A., § 19-2803.]

19-2904. Admittance to bail before conviction. [1875, p. 363, § 493; R.S., R.C., & C.L., § 8103; C.S., § 9095; I.C.A., § 19-2804; am. 2007, ch. 84, § 1, p. 236.]

19-2905. Bail pending appeal from conviction in a criminal case. [I.C., § 19-2905, as added by 1980, ch. 193, § 2, p. 428; am. 1986, ch. 125, § 1, p. 326.]

19-2906. Nature of bail. [Cr. Prac. 1864, §§ 500, 501; R.S., R.C., & C.L., § 8105; C.S., § 9097; I.C.A., § 19-2806; am. 1996, ch. 424, § 1, p. 1448.]

19-2907. Notice of application. [Cr. Prac. 1864, § 498; R.S., R.C., & C.L., § 8106; C.S., § 9098; I.C.A., § 19-2807.]

19-2908. What magistrate may admit to bail. [Cr. Prac. 1864, § 502; R.S., R.C., & C.L., § 8107; C.S., § 9099; I.C.A., § 19-2808.]

19-2909. Form of undertaking. [Cr. Prac. 1864, § 503; R.S., R.C., & C.L., § 8108; C.S., § 9100; I.C.A., § 19-2809; am. 1996, ch. 424, § 2, p. 1448; am. 2002, ch. 32, § 5, p. 36.]

19-2910. Qualifications of bail. [Cr. Prac. 1864, § 504; R.S., R.C., & C.L., § 8109; C.S., § 9101; I.C.A., § 19-2810.]

19-2911. Justification of bail. [Cr. Prac. 1864, §§ 505, 506; R.S., R.C., & C.L., § 8110; C.S., § 9102; I.C.A., § 19-2811.]

19-2912. Discharge of defendant on giving bail. [R.S., R.C., & C.L., § 8111; C.S., § 9103; I.C.A., § 19-2812.]

19-2913. Defendant to be taken before magistrate on arrest. [1875, p. 363, § 503; R.S., R.C., & C.L., § 8112; C.S., § 9104; I.C.A., § 19-2813.]

19-2914. Arrest of defendant for capital offense. [Cr. Prac. 1864, § 508; R.S., R.C., & C.L., § 8113; C.S., § 9105; I.C.A., § 19-2814.]

19-2915. Bail on habeas corpus. [Cr. Prac. 1864, § 509; R.S., R.C., & C.L., § 8114; C.S., § 9106; I.C.A., § 19-2815.]

19-2916. Undertaking after indictment — Form. [Cr. Prac. 1864, § 510; R.S., R.C., & C.L., § 8115; C.S., § 9107; I.C.A., § 19-2816; am. 1996, ch. 424, § 3, p. 1448; am. 2007, ch. 90, § 12, p. 246.]

19-2917. Bail after indictment — Application of other sections. [Cr. Prac. 1864, § 511; R.S., R.C., & C.L., § 8116; C.S., § 9108; I.C.A., § 19-2817.]

19-2918. Increase or reduction of bail.: R.S., R.C., & C.L., § 8117; C.S., § 9109; I.C.A., § 19-2818; am. 1996, ch. 424, § 4, p. 1448.]

19-2919. Bail on appeal — Who may admit to. [Cr. Prac. 1864, § 512; R.S., R.C., & C.L., § 8118; C.S., § 9110; I.C.A., § 19-2819.]

19-2920. Bail on appeal — Qualifications and how put in — Undertaking. [Cr. Prac. 1864, § 514; R.S., R.C., & C.L., § 8119; C.S., § 9111; I.C.A., § 19-2820.]

19-2921. Deposit in lieu of bail. [Cr. Prac. 1864, § 515; R.S., R.C., & C.L., § 8120; C.S., § 9112; I.C.A., § 19-2821.]

19-2922. Deposit after bail. [Cr. Prac. 1864, § 516; R.S., R.C., & C.L., § 8121; C.S., § 9113; I.C.A., § 19-2822.]

19-2923. Deposit applied to payment of fines, fees and costs. [Cr. Prac. 1864, § 517; R.S., R.C., & C.L., § 8122; C.S., § 9114; I.C.A., § 19-2823; am. 1995, ch. 158, § 1, p. 636; am. 2000, ch. 328, § 1, p. 1105.]

19-2924. Surrender of defendant by bail. [Cr. Prac. 1864, §§ 518, 519; R.S., R.C., & C.L., § 8123; C.S., § 9115; I.C.A., § 19-2824; am. 1996, ch. 424, § 5, p. 1448; am. 2004, ch. 251, § 1, p. 723.]

19-2925. Arrest of defendant for surrender. [Cr. Prac. 1864, § 520; R.S., R.C., & C.L., § 8124; C.S., § 9116; I.C.A., § 19-2825.]

19-2926. Return of deposit on surrender. [Cr. Prac. 1864, § 521; R.S., R.C., & C.L., § 8125; C.S., § 9117; I.C.A., § 19-2826; am. 1995, ch. 158, § 2, p. 636; am. 1996, ch. 424, § 6, p. 1448.]

19-2927. Forfeiture of bail. [Cr. Prac. 1864, §§ 522, 523; R.S., R.C., & C.L., § 8126; C.S., § 9118; am. 1929, ch. 234, § 1, p. 456; I.C.A., § 19-2827; am. 1976, ch. 137, § 1, p. 511; am. 1990, ch. 73, § 1, p. 156; am. 1996, ch. 424, § 7, p. 1448; am. 2007, ch. 175, § 1, p. 519.]

19-2928. Enforcement of forfeiture. [Cr. Prac. 1864, § 524; R.S., R.C., & C.L., § 8127; C.S., § 9119; am. 1929, ch. 234, § 2, p. 456; I.C.A., § 19-2828; am. 1990, ch. 73, § 2, p. 156; am. 2007, ch. 175, § 2, p. 519.]

19-2929. Forfeiture of deposit. [Cr. Prac. 1864, § 525; R.S., R.C., & C.L., § 8128; C.S., § 9120; am. 1929, ch. 234, § 3, p. 456; I.C.A., § 19-2829; am. 1990, ch. 72, § 1, p. 156; am. 2007, ch. 175, § 3, p. 519.]

19-2930. Recommitment of defendant after bail. [Cr. Prac. 1864, § 526; R.S., R.C., & C.L., § 8129; C.S., § 9121; I.C.A., § 19-2830.]

19-2931. Order for recommitment. [Cr. Prac. 1864, § 527; R.S., R.C., & C.L., § 8130; C.S., § 9122; I.C.A., § 19-2831.]

19-2932. Arrest for recommitment. [Cr. Prac. 1864, § 528; R.S., R.C., & C.L., § 8131; C.S., § 9123; I.C.A., § 19-2832.]

19-2933. Commitment to await judgment. [Cr. Prac. 1864, § 529; R.S., R.C., & C.L., § 8132; C.S., § 9124; I.C.A., § 19-2833.]

19-2934. Readmittance to bail. [Cr. Prac. 1864, § 530; R.S., R.C., & C.L., § 8133; C.S., § 9125; I.C.A., § 19-2834.]

19-2935. Who may take bail upon readmittance. [Cr. Prac. 1864, § 531; R.S., R.C., & C.L., § 8134; C.S., § 9126; I.C.A., § 19-2835.]

19-2936. Bail on recommitment — Form of undertaking. [Cr. Prac. 1864, § 532; R.S.,

R.C., & C.L., § 8135; C.S., § 9127; I.C.A., § 19-2836; am. 1996, ch. 424, § 8, p. 1448; am. 2007, ch. 90, § 13, p. 246.]

19-2937. Bail on recommitment — Qualifications and how put in. [Cr. Prac. 1864, § 533; R.S., R.C., & C.L., § 8136; C.S., § 9128; I.C.A., § 19-2837.]

19-2902. Statement of policy. — (1) The legislature finds and declares that:

(a) Bail, in criminal cases, is a constitutional right subject to certain limitations;

(b) It is necessary to establish a statewide process to uniformly implement this right and the limitations.

(2) The purpose of this chapter is to provide a uniform and comprehensive statewide process for the administration of bail in criminal cases in order to:

(a) Ensure the appearance of defendants before the courts;

(b) Protect the right of defendants to bail, as constitutionally provided; and

(c) Ensure the protection and safety of victims, witnesses and the public.

History.

I.C., § 19-2902, as added by 2009, ch. 90, § 2, p. 259.

Compiler's Notes. Former § 19-2902 was repealed. See Compiler's Notes, § 19-2901.

19-2903. Right to bail — Limitations. — Any person charged with a crime who is not released on his own recognizance is entitled to bail, as a matter of right, before a plea or verdict of guilty, except when the offense charged is punishable by death and the proof is evident or the presumption is great. In the discretion of the court, bail may be allowed in the following cases:

(1) After the defendant is found guilty or pleads guilty and before sentencing;

(2) While an appeal is pending from a judgment of conviction, an order withholding judgment or an order imposing sentence, except that a court shall not allow bail when the defendant has been sentenced to death or life imprisonment;

(3) Upon a charge of a violation of the terms of probation; and

(4) Upon a finding of a violation of the conditions of release pursuant to section 19-2919, Idaho Code.

History.

I.C., § 19-2903, as added by 2009, ch. 90, § 2, p. 259.

Compiler's Notes. Former § 19-2903 was repealed. See Compiler's Notes, § 19-2901.

Cross Reference. Constitutional provision, Const., art. 1, § 6.

Decisions Under Prior Law

Analysis

Appeals.
—Bondsman's liability.
Bail on certificate of probable cause.
Conflict with criminal rules.
Construction.
Determination of admission to bail.
Discretion of court.
Form of bond.
Imprisonment for misdemeanor.
In general.
Intention to appeal.
New charge before magistrate.

Presumption of guilt.
Proof evident.
Right to bail.

Appeals.

The trial court's order refusing to exonerate a bail bond was an appealable order under I.A.R., Rule 11(a)(1). State v. Rupp, 123 Idaho 1, 843 P.2d 151 (1992).

—Bondsman's Liability.

The terms of an appellate bail bond read into the record extended bondsman's liability on the bond until defendant appeared before the trial court on remand. State v. Rupp, 123 Idaho 1, 843 P.2d 151 (1992).

Bail on Certificate of Probable Cause.

Admission to bail after conviction is a matter entirely separate and distinct from a certificate of probable cause; while defendant may not be admitted to bail prior to the issuance of such certificate, yet, on the other hand, a certificate may and should properly issue in many cases where defendant should not be admitted to bail. In re Neil, 12 Idaho 749, 87 P. 881 (1906).

Issuance of certificate of probable cause does not necessarily entitle defendant to release on bail. State v. Iverson, 76 Idaho 117, 278 P.2d 205 (1954).

Conflict With Criminal Rules.

As to the authority of a trial court to allow post-conviction bail to a convicted criminal made ineligible for bail by a statutory enactment, the issue is one of procedure rather than of substantive law, and where conflict exists between statutory criminal provisions and the Idaho Criminal Rules in manners of procedure, the rules will prevail. Thus, a trial court may allow post-conviction bail under I.C.R. 46(b) to a convicted criminal who is ineligible for bail under this section. State v. Currington, 108 Idaho 539, 700 P.2d 942 (1985).

Construction.

The statute does not require the giving of security on appeal for payment of a fine unless there is attached to fine the alternative of imprisonment in case fine is not paid. In re Schuster, 25 Idaho 465, 138 P. 135 (1914).

Determination of Admission to Bail.

On the question as to admittance to bail after conviction, the district court should consider, whether defendant is prosecuting appeal in good faith, the personal situation of defendant, the nature and circumstances of the offense, defendant's past record, the possibility that defendant will commit additional offenses, and the possibility that defendant will attempt to escape. State v. Jiminez, 93 Idaho 140, 456 P.2d 784 (1969).

Factors to be considered in determining whether or not a defendant should be admitted to bail are: whether the appeal is taken in good faith, whether his release would create a menace to society in light of the crime of which he was convicted and his past record and whether he is likely to flee in view of his community ties and record of appearance at past hearings. State v. Kerrigan, 98 Idaho 701, 571 P.2d 762 (1977).

Discretion of Court.

Where defendant who has been sentenced to imprisonment appeals and applies to trial judge for admission to bail, such application is addressed to the sound legal discretion of such judge or court, and unless it clearly appears that such discretion has been abused, action of trial judge or court will not be disturbed or interfered with by Supreme Court on application for a writ of habeas corpus. In re Schriber, 19 Idaho 531, 114 P. 29 (1911).

In prosecution of bank officer for making false reports, admission to bail after conviction and pending appeal is discretionary with trial court. State v. Waterman, 36 Idaho 259, 210 P. 208 (1922).

A reviewing court may not set aside an order denying bail where there is no abuse of discretion apparent. In re Bolitho, 51 Idaho 302, 6 P.2d 855 (1931).

Discretion in giving or refusing bail should be judicially exercised. State v. Iverson, 76 Idaho 117, 278 P.2d 205 (1954).

Refusal of bail pending appeal of one convicted of lewd conduct with minor under 16 and sentenced for life was not an abuse of discretion though defendant desired to undergo treatment for mental condition. State v. Iverson, 76 Idaho 117, 278 P.2d 205 (1954).

A convicted and sentenced defendant who appeals and applies to the trial court for admission to bail addresses such application to the sound legal discretion of the court and, unless it appears such discretion has been abused, action of the trial court on such application will not be disturbed on appeal. State v. Dunn, 91 Idaho 870, 434 P.2d 88 (1967).

While an application for admission to bail is addressed to the sound discretion of the trial court and that court's decision will not be set aside absent an abuse of discretion, bail cannot be denied without some sufficient reason being articulated by the trial court. State v. Kerrigan, 98 Idaho 701, 571 P.2d 762 (1977).

Form of Bond.

Conditions of bail bond. In re Schuster, 25 Idaho 465, 138 P. 135 (1914).

Imprisonment for Misdemeanor.

Applicable to misdemeanors where incarceration is part of sentence. In re Bolitho, 51 Idaho 302, 6 P.2d 855 (1931).

In General.

A defendant was not entitled to release on bail pending appeal after arrest and conviction of murder. State v. Larsen, 91 Idaho 42, 415 P.2d 685 (1966).

Intention to Appeal.

A convicted defendant does not qualify for admission to bail under this section by orally advising the court of his intention to appeal. State v. Dunn, 91 Idaho 870, 434 P.2d 88 (1967).

New Charge Before Magistrate.

Where bail bond has been duly executed prior to preliminary examination to obtain release of one charged with crime, and district court upon motion to quash the information orders the case resubmitted to committing magistrate, and prosecuting attorney files a new complaint before such magistrate, the latter has no authority to call upon the sureties to produce the body of defendant to answer the new charge, or to declare the bond forfeited by reason of their failure to do so. State v. McLeod, 31 Idaho 536, 173 P. 496 (1918).

Presumption of Guilt.

In an application for bail after conviction, applicant is presumed to be guilty. In re Bolitho, 51 Idaho 302, 6 P.2d 855 (1931).

Proof Evident.

Where the shooting took place in daylight before witnesses, it was apparent that the proof was evident, and the presumption great of guilt, there was no error committed in refusing to set bail. State v. Linn, 93 Idaho 430, 462 P.2d 729 (1969).

Right to Bail.

As a general rule a defendant prosecuting an appeal in good faith should be entitled to bail. State v. Iverson, 76 Idaho 117, 278 P.2d 205 (1954).

Since defendant was sentenced to a ten-year indeterminate period and, under this section, would not be eligible for bail pending appeal and since it appeared that his appeal was frivolous, trial court did not abuse its discretion in denying bail pending appeal. State v. Trefren, 112 Idaho 812, 736 P.2d 864 (Ct. App.), review denied, 113 Idaho 638, 747 P.2d 47, and 116 Idaho 466, 776 P.2d 828 (1987).

A.L.R. Waiver of privilege against arrest, by giving bail. 8 A.L.R. 757.

Abolition of death penalty as affecting right to bail of one charged with murder in first degree. 8 A.L.R. 1352.

Constitutional right to bail pending appeal from conviction. 19 A.L.R. 807; 77 A.L.R. 1235.

Power to admit to bail in deportation case. 36 A.L.R. 887.

Bail pending appeal from conviction. 45 A.L.R. 458.

Amount of bail required in criminal action. 53 A.L.R. 399.

Arresting one who has been released on bail. 62 A.L.R. 462.

Factors in fixing amount of bail in criminal cases. 72 A.L.R. 801.

Amount of bail as affected by forfeiture of other bonds. 72 A.L.R. 820.

Specific crime, necessity of reference to, in bail bond. 103 A.L.R. 535.

Rape as bailable offense. 118 A.L.R. 1115.

Dismissal or vacation of indictment as terminating liability or obligation of surety on bail bond. 18 A.L.R.3d 1354.

Liability on bail bond taken without authority. 27 A.L.R.4th 246.

Bail: Duration of surety's liability on pretrial bond. 32 A.L.R.4th 504.

Bail: Duration of surety's liability on post-trial bail bond. 32 A.L.R.4th 575.

Bail: Effect on liability of bail bond surety of state's delay in obtaining indictment or bringing defendant to trial. 32 A.L.R.4th 600.

19-2904. Bail, release on recognizance and conditions of release. — The court may release a person on his own recognizance or set an amount of bail, and may impose any conditions of release. In making these determinations the court shall consider the following objectives:

(1) Ensuring the appearance of the defendant;

(2) Ensuring the integrity of the court process including the right of the defendant to bail as constitutionally provided;

(3) Ensuring the protection of victims and witnesses; and

(4) Ensuring public safety.

History.

I.C., § 19-2904, as added by 2009, ch. 90, § 2, p. 259.

Compiler's Notes. Former § 19-2904 was repealed. See Compiler's Notes, § 19-2901.

19-2905. Definitions. — As used in this chapter, unless the context requires otherwise:

(1) "Bail" means a monetary amount required by the court to release the defendant from custody and to ensure his appearance in court as ordered.

(2) "Bail agent" means a producer licensed by the state of Idaho in the line of surety insurance who is authorized by an insurer to execute or countersign undertakings of bail in connection with judicial criminal proceedings.

(3) "Bail bond" means a financial guarantee, posted by a bail agent and underwritten by a surety insurance company, that the defendant will appear as ordered.

(4) "Bench warrant" means a warrant issued by the court because the defendant failed to appear as ordered, failed to comply with a condition of release or the sureties are no longer sufficient.

(5) "Cash deposit" means payment in the form of United States currency, money order, certified check, cashier's check or such other form of payment as provided by the rules of the supreme court.

(6) "Certificate of surrender" means a certificate in a form approved by the supreme court that is completed by a surety insurance company or its bail agent, or a person who has posted a property bond or cash deposit, and provided to the sheriff of the county where the action is pending for signature.

(7) "Conditions of release" means any reasonable restrictions, conditions or prohibitions placed upon the defendant's activities, movements, associations or residences by the court, excluding the court order requiring the defendant to appear in court.

(8) "Exoneration" means a court order directing the full or partial release and discharge from liability of the surety underwriting a bail bond or the person posting a cash deposit or a property bond.

(9) "Forfeiture" means an order of the court reciting that the defendant failed to appear as ordered and stating that bail is forfeited.

(10) "Order of recommitment" means an order of the court committing the defendant back to the custody of the sheriff.

(11) "Person" means a natural person, legal corporation, limited liability corporation, partnership, sole proprietorship or any other business entity recognized by the state of Idaho.

(12) "Property bond" means a financial guarantee approved by the court, secured by property, real or personal, that the defendant will appear in court as ordered.

(13) "Readmittance to bail" means an order of the court allowing the defendant to post new bail following an order of revocation.

(14) "Recommitment" means the return of the defendant to the custody of the sheriff following revocation or forfeiture of bail.

(15) "Reinstatement of bail" means an order of the court allowing the defendant to be released on the same bail previously posted that has been ordered forfeited.

(16) "Revocation of bail" means an order by the court revoking the defendant's release on bail.

(17) "Surety insurance company" means an admitted insurer authorized in the line of surety pursuant to title 41, Idaho Code.

(18) "Surrender" means the voluntary surrender or delivery of the defendant into the custody of the sheriff of the county where the action is pending.

History.
I.C., § 19-2905, as added by 2009, ch. 90, § 2, p. 259.

Compiler's Notes. Former § 19-2905 was repealed. See Compiler's Notes, § 19-2901.

19-2906. Admission to bail. — Admission to bail is the order of a competent court that the defendant shall be released from actual custody of the sheriff upon posting bail.

History.
I.C., § 19-2906, as added by 2009, ch. 90, § 2, p. 259.

Compiler's Notes. Former § 19-2906 was repealed. See Compiler's Notes, § 19-2901.

Cross Reference. Bail for witnesses, I.C.R. 46.1.

Bail or release on own recognizance, I.C.R. 46.

Privilege of bail guaranteed, Const., art. 1, § 6.

DECISIONS UNDER PRIOR LAW

ANALYSIS

Revocation of bail.
—After guilty plea.

Revocation of Bail.

—After Guilty Plea.

In a lewd conduct and sexual abuse of a minor case, where the judge based his decision to revoke the bail on the seriousness of the two charges, the fact that defendant first denied guilt and intent at his arraignment and then admitted the requisite intent, thereby indicating to the judge some degree of denial, and the judge's "gut feeling" that defendant might flee, based on his observations, the judge did not abuse his discretion by disallowing bail when he accepted defendant's guilty plea. State v. Sabin, 120 Idaho 780, 820 P.2d 375 (Ct. App. 1991).

Am. Jur. 8 Am. Jur. 2d, Bail and Recognizance, § 1 et seq.

C.J.S. 8 C.J.S., Bail, § 1 et seq.

A.L.R. Mandamus to compel judge or other officer to grant accused bail or to accept proffered sureties. 23 A.L.R.2d 803.

Sexual psychopaths, bail pending determination of psychopathy under statutes relating to. 24 A.L.R.2d 350.

Failure to appear, in the like, resulting in forfeiture or conditional forfeiture of bail, as affecting right to second admission to bail in same noncapital criminal case. 29 A.L.R.2d 945.

Court's power and duty, pending determination of habeas corpus proceeding on merits, to admit petitioner to bail. 56 A.L.R.2d 668.

Death of principal as defense available to sureties on bail or appearance on. 63 A.L.R.2d 830.

Limitation of actions, enforceability of bail bond or recognizance against surety where, at time it was filed, prosecution of principal was barred by. 75 A.L.R.2d 1431.

Governor's authority to remit forfeited bail bond. 77 A.L.R.2d 988.

Appealability of order relating to forfeiture of bail. 78 A.L.R.2d 1180.

Burden of proof, where bail is sought before judgment but after indictment in capital case, as to whether proof is evident or the presumption great. 89 A.L.R.2d 355.

Propriety of applying cash bail to payment of fine. 42 A.L.R.5th 547.

Insanity of accused as affecting right to bail in criminal case. 11 A.L.R.3d 1385.

Dismissal or vacation of indictment as terminating liability or obligation of surety on bail bond. 18 A.L.R.3d 1354.

Constitutional or statutory provisions regarding release on bail as applicable to children subject to Juvenile Delinquency Act. 53 A.L.R.3d 848.

Right of bail in proceeding in juvenile courts. 53 A.L.R.3d 848.

Pretrial preventive detention by state court. 75 A.L.R.3d 956.

Bail: Effect on surety's liability under bail bond of principal's incarceration in other jurisdiction. 33 A.L.R.4th 663.

Bail: Effect on surety's liability under bail bond of principal's subsequent incarceration in same jurisdiction. 35 A.L.R.4th 1192.

19-2907. Posting bail — Sufficient sureties. — (1) The posting of

bail consists of filing sufficient sureties with the court, as required by the court, to ensure the defendant's appearance. Sufficient sureties shall consist of any one (1) of the following:

(a) A bail bond;

(b) A property bond; or

(c) A cash deposit.

(2) Although bail may be posted in the form of a cash deposit pursuant to the provisions of subsection (1) of this section, a defendant shall not be required to post bail in the form of a cash deposit.

History.
I.C., § 19-2907, as added by 2009, ch. 90, § 2, p. 259.

Compiler's Notes. Former § 19-2907 was repealed. See Compiler's Notes, § 19-2901.

A.L.R. Necessity of acknowledgment of bail bond in open court. 38 A.L.R. 1108.

Lien or encumbrance on his real property as affecting qualifications of surety on bail bond. 56 A.L.R. 1097.

Disciplinary power of court in respect of suretyship in judicial proceedings. 91 A.L.R. 889.

19-2908. Cash deposit applied to payments of fines, fees, costs and restitution. — When bail has been posted by cash deposit and remains on deposit at the time of the judgment, the clerk of the court shall, under the direction of the court, apply the money in satisfaction of fines, fees, costs and restitution imposed in the case and fines, fees, costs and restitution that have been imposed against the defendant in any other criminal action, and after satisfying the fines, fees, costs and restitution, shall refund the surplus, if any, to the person posting the cash deposit.

History.
I.C., § 19-2908, as added by 2009, ch. 90, § 2, p. 259.

Compiler's Notes. Former § 19-2908 was repealed. See Compiler's Notes, § 19-2901.

19-2909. Property bond. — A property bond may be posted by the defendant or third person on behalf of the defendant. For real property to qualify as sufficient surety, it must be located in the state of Idaho and must have an equity value, after deducting the outstanding balance of any existing liens and encumbrances, in the amount of the bail set by the court plus anticipated collection costs. Acceptance of a property bond is in the discretion of the court. A property bond posted with and accepted by the court pursuant to this section, and recorded, shall constitute a consensual lien on the property pursuant to section 55-1005(3), Idaho Code. All fees shall be paid by the person posting the property bond. An order of the court exonerating the property bond shall extinguish the lien and cancel the promissory note. The property bond and the promissory note shall be in a form approved by the supreme court.

History.
I.C., § 19-2909, as added by 2009, ch. 90, § 2, p. 259.

Compiler's Notes. Former § 19-2909 was repealed. See Compiler's Notes, § 19-2901.

Cross Reference. Surety bonds, § 41-2607.

DECISIONS UNDER PRIOR LAW

ANALYSIS

Defective bonds.
Justification before notary.

Defective Bonds.

Bond payable to "the people of the United States" instead of to "the people of the United States in the territory of Idaho" must be reformed before any judgment can be rendered upon it in favor of the people of the territory. United States v. Shoup, 2 Idaho (Hasb.) 493, 21 P. 656 (1889).

Justification Before Notary.

This section does not prohibit justification of sureties before a notary public if committing magistrate is willing to approve bond after it is so acknowledged; the bond is valid and enforceable against sureties, notwithstanding its acknowledgment before a notary. State v. Baird, 13 Idaho 126, 89 P. 298 (1907).

A.L.R. Variance between name in bail bond and in judgment of forfeiture. 20 A.L.R. 411.

Acknowledgment of bail bond in open court, necessity of. 38 A.L.R. 1108.

Promise by one other than principal to indemnify one agreeing to become surety or guarantor as within statute of frauds. 13 A.L.R.4th 1153.

19-2910. Substitution of sufficient sureties. — At any time before an order of forfeiture, the court may allow the defendant to substitute any type of surety identified in section 19-2907, Idaho Code, for the previously posted surety. Upon substitution, the previously posted surety shall be exonerated.

History.

I.C., § 19-2910, as added by 2009, ch. 90, § 2, p. 259.

Compiler's Notes. Former § 19-2910 was repealed. See Compiler's Notes, § 19-2901.

19-2911. Release of defendant on posting bail. — Upon the posting of bail in the amount set by the court, the defendant shall be released from the actual custody of the sheriff.

History.

I.C., § 19-2911, as added by 2009, ch. 90, § 2, p. 259.

Compiler's Notes. Former § 19-2911 was repealed. See Compiler's Notes, § 19-2901.

19-2912. Increasing or reducing bail. — After a defendant has been admitted to bail, the court in which the charge is pending may, upon good cause shown, increase or reduce the amount of bail. If the amount is increased, the court shall order the defendant to be committed to the actual custody of the sheriff until bail is posted in the increased amount. Any previous bail posted in the case shall be exonerated by the court. If the defendant applies for a reduction of the amount of bail, notice of the application shall be served upon the attorney for the state and the person posting bail within five (5) business days.

History.

I.C., § 19-2912, as added by 2009, ch. 90, § 2, p. 259.

Compiler's Notes. Former § 19-2912 was repealed. See Compiler's Notes, § 19-2901.

19-2913. Surrender of defendant. — (1) At any time before forfeiture of bail, a surety insurance company or its bail agent or person posting a property bond or cash deposit may surrender the defendant to the sheriff of the county where the action is pending. Upon the surrender of the defendant, the sheriff shall accept and incarcerate the defendant in lieu of the bail originally set by the court.

(2) At the time of surrender of the defendant to the sheriff, the surety insurance company or its bail agent or person posting a property bond or cash deposit shall provide the sheriff with a certificate of surrender.

(3) The surety insurance company or its bail agent or person posting a property bond or cash deposit shall, within five (5) business days of the surrender of the defendant, file with the court in which the action or appeal is pending the certificate of surrender and shall deliver a copy of the same to the attorney for the state. The court shall thereupon order the bail exonerated.

(4) At any time before forfeiture of bail, a defendant may surrender himself to the sheriff of the county where the action is pending. Upon surrender by the defendant, the sheriff shall accept and incarcerate the defendant in lieu of the bail originally set by the court.

History.
I.C., § 19-2913, as added by 2009, ch. 90, § 2, p. 259.

Compiler's Notes. Former § 19-2913 was repealed. See Compiler's Notes, § 19-2901.

Decisions Under Prior Law

In General.
This section refers only to the surrender of the defendant before forfeiture of the bond and is not available to the surety after forfeiture has been entered. State v. Overby, 90 Idaho 41, 408 P.2d 155 (1965).

19-2914. Arrest of defendant for surrender. — At any time before the exoneration of bail, the surety insurance company or its bail agent or the person posting a property bond or cash deposit may empower any person of suitable age and discretion to arrest the defendant at any place within the state by signing an affidavit extending such authority in a form approved by the supreme court.

History.
I.C., § 19-2914, as added by 2009, ch. 90, § 2, p. 259.

Compiler's Notes. Former § 19-2914 was repealed. See Compiler's Notes, § 19-2901.

A.L.R. Surrender of principal by sureties on bail bond. 3 A.L.R. 180; 15 A.L.R. 1524; 32 A.L.R. 259; 43 A.L.R. 140; 73 A.L.R. 1369.

Passing an indictment to the files as discharging bail. 18 A.L.R. 1154.

Bail: Effect on surety's liability under bail bond of principal's incarceration in other jurisdiction. 33 A.L.R.4th 663.

19-2915. Forfeiture of bail. — (1) If without sufficient excuse the defendant fails to appear before the court as ordered, the court shall immediately:

(a) Enter the defendant's failure to appear in the minutes;

(b) Order forfeiture of the bail; and

(c) Issue a bench warrant for the arrest of the defendant.

(2) The clerk shall provide the person posting bail written notice of the order of forfeiture by mailing notice within five (5) business days of the order of forfeiture to the last known address of the person posting bail or that person's designated agent.

(3) If the court quashes the bench warrant within one hundred eighty (180) days after the order of forfeiture, the forfeiture of bail shall be set aside and the court shall notify the person posting bail of the setting aside of the

forfeiture within five (5) business days of the date of the order quashing the bench warrant and reinstating the bail.

History.
I.C., § 19-2915, as added by 2009, ch. 90, § 2, p. 259.

Compiler's Notes. Former § 19-2915 was repealed. See Compiler's Notes, § 19-2901.

DECISIONS UNDER PRIOR LAW

ANALYSIS

Appeals.
Continuance.
Discretion of court.
Escape.
Execution for fine.
Factors considered.
Factual findings not required.
In general.
Notice.
Time for relief.

Appeals.
In appeal from conviction for burglary the defendant could not contend that action of trial court in ordering forfeiture of bond for failure of defendant to appear on date set for trial was error, since defendant should have appealed from the order forfeiting the bond, as the order forfeiting the bond was a final appealable order. State v. Fedder, 76 Idaho 535, 285 P.2d 802 (1956).

The issue of whether the district court met its statutory duties prior to forfeiting defendants' bail is a question of statutory construction over which the Court of Appeals exercises free review. State v. Plant, 130 Idaho 130, 937 P.2d 442 (Ct. App. 1997).

Continuance.
Magistrate's continuance of case for arraignment without forfeiting defendant's bond for failure to appear did not affect the district court's power to later forfeit missing defendant's bond. State v. Rocha, 131 Idaho 113, 952 P.2d 1249 (Ct. App. 1998).

Discretion of Court.
While it has long been held in Idaho that matters such as the fixing of bail and the release from custody are within the discretion of the court, the forfeiture of a bond or the setting aside of such a forfeiture are also discretionary decisions within the realm of the district court. State v. Fry, 128 Idaho 50, 910 P.2d 164 (Ct. App. 1994).

Where a defendant failed to appear before the court because he was incarcerated in another jurisdiction and where the district court held that his incarceration did not amount to a sufficient excuse and that this issue was not one of discretion, the court erred by failing to recognize that the issue of bond forfeiture was one to which discretion should be applied. State v. Fry, 128 Idaho 50, 910 P.2d 164 (Ct. App. 1994).

Magistrate did not abuse its discretion in failing to forfeit defendant's bond when he failed to appear at a preliminary hearing, where the magistrate had a reasonable belief, later proven incorrect, that the defendant's failure to appear was excusable. State v. Rocha, 131 Idaho 113, 952 P.2d 1249 (Ct. App. 1998).

Escape.
Person committed to jail must be confined therein until he is discharged; if he is permitted to go at large out of jail except by virtue of legal order or process, it is an escape. Cornell v. Mason, 46 Idaho 112, 268 P. 8 (1928).

Execution for Fine.
Where judgment is for fine and costs, an execution may issue thereon as in judgment in a civil case. In re Schuster, 25 Idaho 465, 138 P. 135 (1914).

Factors Considered.
In deciding how much, if any, of the bond to forfeit, when defendant fails to appear before the court, the court should also consider: (1) the willfulness of the defendant's violation of bail conditions; (2) the surety's participation in locating and apprehending the defendant; (3) the costs, inconvenience, and prejudice suffered by the state as a result of the violation; (4) any intangible costs; (5) the public's interest in ensuring a defendant's appearance; and (6) any mitigating factors. State v. Fry, 128 Idaho 50, 910 P.2d 164 (Ct. App. 1994).

The incarceration of a defendant in another jurisdiction, which prevented him from appearing before the court, is only one factor to be considered by the district court in making its discretionary decision whether to forfeit the bond; the court should also consider whether the incarceration arises from a new crime committed while the defendant was free on bond or from an offense that preceded his arrest. State v. Fry, 128 Idaho 50, 910 P.2d 164 (Ct. App. 1994).

Factual Findings not Required.
The district court's findings that the defendants failed to appear when ordered was sufficient to satisfy this section; the district

court was not required to make factual findings regarding the defendants' excuses for failing to appear. State v. Plant, 130 Idaho 130, 937 P.2d 442 (Ct. App. 1997).

In General.

The right to relief from forfeiture of bail or deposit in lieu thereof is governed by statute. State v. Mayer, 81 Idaho 111, 338 P.2d 270 (1959).

District court substantially complied with the requirements of this section even though the notice of forfeiture listed the incorrect date of forfeiture; it did not err in denying the bond surety's motion to exonerate the bond and did not abuse its discretion in denying the surety's second motion to extend the enforcement of the bond forfeiture because this section and Idaho Crim. R. 46 do not grant the authority to do so. State v. Vargas, 141 Idaho 485, 111 P.3d 621 (Ct. App. 2005).

Although the expense to the state, already incurred or anticipated to be incurred, because of defendant's failure to appear is a significant consideration, the state has no entitlement to a windfall where the amount of the bail far exceeds the state's costs. State v. Beck, 144 Idaho 651, 167 P.3d 788 (Ct. App. 2007).

Notice.

Despite a case number discrepancy, a surety was put on inquiry as to the correct case number by the notice of the forfeiture. Notice was sufficient for the surety to identify the person to whom the notice applied, as well as the probation violation involved. State v. Castro, 145 Idaho 993, 188 P.3d 935 (Ct. App. 2008).

Time for Relief.

The only ground on which relief may be granted after forfeiture is the excusable neglect of the defendant for failure to appear and, where the defendant, subsequent to forfeiture of his bond followed by his arrest, told the court that he was in town on the day he was required to appear but did not appear, relief from the forfeiture cannot be granted. State v. Overby, 90 Idaho 41, 408 P.2d 155 (1968).

Denial of motion to exonerate a bond was improper because a 90-day time limit did not apply since a bail bond company was seeking an immediate exoneration of the bond, even while defendant remained outside of Idaho. The motions were timely because they requested an exoneration before remittance of the forfeiture; no independent action was filed by the prosecution. State v. Beck, 144 Idaho 651, 167 P.3d 788 (Ct. App. 2007).

A.L.R. Amount of bail as affected by forfeiture of other bonds. 72 A.L.R. 820.

Insanity of principal as relieving bail for his nonappearance. 7 A.L.R. 394.

Induction of principal into military or naval service as exonerating his bail for his nonappearance. 8 A.L.R. 371; 147 A.L.R. 1428; 151 A.L.R. 1462; 153 A.L.R. 1431.

Escape of principal during his detention on separate charge as affecting liability of bail. 45 A.L.R. 1037.

Right of bail to relief from forfeiture of bond or recognizance in event of subsequent surrender or production of principal. 84 A.L.R. 420.

Arraignment and plea, failure of judgment or order forfeiting bail, or deposit in lieu thereof, to recite. 90 A.L.R. 298.

Liability of surety on bail bond taken without authority. 27 A.L.R.4th 246.

Bail: Effect on surety's liability under bail bond of principal's incarceration in other jurisdiction. 33 A.L.R.4th 663.

19-2916. Setting aside order of forfeiture and reinstating bail. — If the defendant appears in court after the entry of the defendant's failure to appear and satisfactorily explains his failure to appear, the court may set aside the order of forfeiture and reinstate bail. Before reinstatement of bail, the court shall quash any bench warrant and set aside any order of forfeiture of the bail. The court shall provide written notice of reinstatement of bail to the person posting bail or to that person's designated agent within five (5) business days of the order reinstating bail.

History.

I.C., § 19-2916, as added by 2009, ch. 90, § 2, p. 259.

Compiler's Notes. Former § 19-2916 was repealed. See Compiler's Notes, § 19-2901.

19-2917. Motion to set aside forfeiture. — Pursuant to a motion filed within one hundred eighty (180) days after an order of forfeiture as provided in section 19-2915, Idaho Code, the court that ordered forfeiture may direct that the order of forfeiture be set aside, in whole or in part, upon such

conditions as the court may impose, as provided by rules adopted by the supreme court, if it appears that justice so requires. If the court sets aside the order of forfeiture, then it may:

(1) Reinstate the bail;

(2) Exonerate the bail;

(3) Recommit the defendant to the custody of the sheriff and set new bail; or

(4) Release the defendant on his own recognizance.

History.
I.C., § 19-2917, as added by 2009, ch. 90, § 2, p. 259.

Compiler's Notes. Former § 19-2917 was repealed. See Compiler's Notes, § 19-2901.

19-2918. Remittance of forfeiture — Payment of bail. — (1) The person posting bail shall pay to the clerk of the court the amount of bail ordered within five (5) business days after the expiration of the one hundred eighty (180) day period following the order of forfeiture of bail unless:

(a) The order of forfeiture has been set aside by the court;

(b) The bail has been exonerated by the court; or

(c) A motion to set aside the order of forfeiture or a motion to exonerate bail has been timely filed, together with a request for hearing, and has not been decided by the court. If the motion is decided and denied by the court more than one hundred eighty (180) days after the order of forfeiture, then the person posting bail shall pay the amount of bail to the clerk of the court within five (5) business days after the entry of the court's order denying the motion. A timely filed notice of appeal and motion to stay the forfeiture stays the obligation to remit payment until five (5) business days after the entry of the court's order denying the motion to stay or, in the event such motion is granted, five (5) business days following the final determination of the appeal.

(2) If cash is deposited in lieu of bail, the clerk of the court shall pay the cash deposit to the county treasurer. If the person posting a bail bond or property bond that has been forfeited does not pay the amount of bail within the time provided in this section, then the order of forfeiture shall become a judgment against the person posting the bail bond or property bond.

(3) After the notice required by section 19-2915, Idaho Code, in the event that a surety insurance company fails to pay the amount of any bail forfeited within the time required by this section, the administrative district judge may order the sheriffs and clerks of all counties in the judicial district not to accept the posting of any new bail bonds from such company until the amount of bail forfeited has been paid. An administrative district judge in another district may also order the sheriffs and clerks of all counties in his district not to accept the posting of any new bail bonds from such company until the amount of bail forfeited has been paid.

(4) If the administrative district judge has reasonable cause to believe that a bail agent has committed any of the actions that could form the basis for a suspension of the bail agent's license pursuant to section 41-1039(3), Idaho Code, the court shall immediately refer the matter to the director of the department of insurance for appropriate disciplinary action pursuant to

sections 41-1016 and 41-1039, Idaho Code, and may enter an order that the sheriffs and clerks of all counties in the judicial district shall not accept bail bonds submitted by that bail agent until the director has rendered a decision as to whether to suspend the bail agent's license pursuant to section 41-1039(3), Idaho Code. The director shall immediately notify all judicial district trial court administrators of such decision.

History.
I.C., § 19-2918, as added by 2009, ch. 90, § 2, p. 259; am. 2010, ch. 86, § 6, p. 165; am. 2013, ch. 36, § 2, p. 77.

Compiler's Notes. Former § 19-2918 was repealed. See Compiler's Notes, § 19-2901.

The 2010 amendment, by ch. 86, added the last sentence in paragraph (1)(c) and added subsections (3) and (4).

The 2013 amendment, by ch. 36, substituted "section 41-1039(3)" for "section 41-1039(4)" twice in subsection (4).

Decisions Under Prior Law

Analysis

Appeals.
Execution for fine and costs.
In general.
Requirements.

Appeals.
In appeal from conviction for burglary the defendant could not contend that action of trial court in ordering forfeiture on bond for failure of defendant to appear on date set for trial was error, since defendant should have appealed from the order forfeiting the bond, as the order forfeiting the bond was a final appealable order. State v. Fedder, 76 Idaho 535, 285 P.2d 802 (1955).

Execution for Fine and Costs.
If the judgment is for fine and costs, an execution may be issued thereon as in case of judgment in civil case. In re Schuster, 25 Idaho 465, 138 P. 135 (1914).

In General.
This section authorizes the state to enforce a criminal bond forfeiture through a separate civil action. State v. Rocha, 131 Idaho 113, 952 P.2d 1249 (Ct. App. 1998).

Denial of motion to exonerate a bond was improper because a 90-day time limit did not apply since a bail bond company was seeking an immediate exoneration of the bond, even while defendant remained outside of Idaho. The motions were timely because they requested an exoneration before remittance of the forfeiture; no independent action was filed by the prosecution. State v. Beck, 144 Idaho 651, 167 P.3d 788 (Ct. App. 2007).

Requirements.
There is no provision in the state code or criminal rules authorizing the enforcement of a bail bond forfeiture without the necessity of an independent action. State v. Rocha, 131 Idaho 113, 952 P.2d 1249 (Ct. App. 1998).

Once proper notice is given and a surety fails to remit the forfeited bail bond, the prosecuting attorney may proceed under this section for enforcement of the forfeited bond. State v. Rocha, 131 Idaho 113, 952 P.2d 1249 (Ct. App. 1998).

A.L.R. Variance between name in bail bond and in judgment of forfeiture. 20 A.L.R. 411.

19-2919. Revocation of bail — Violation of conditions of release. — (1) Upon its own motion or upon a verified petition alleging that the defendant willfully violated a condition of release, the court may issue a bench warrant directing that the defendant be arrested and brought before the court for a bail revocation hearing, or the court may order the defendant to appear before the court at a time certain. At the bail revocation hearing, if the court finds that the defendant willfully violated a condition of release and the defendant is present before the court, the court may revoke the bail and remand the defendant to the custody of the sheriff. At any time thereafter, the court may reset bail in the same or a new amount and impose conditions of release. If the defendant fails to appear at the bail revocation hearing, the court shall issue a bench warrant for the defendant's arrest.

(2) In its order revoking bail, the court shall recite generally the facts

upon which revocation of bail is founded and order that the defendant be recommitted to the custody of the sheriff of the county where the action is pending to be detained until legally released. The court may reset bail in the same or a new amount and impose any appropriate conditions of release.

(3) The court may deny readmittance to bail if the court finds that the defendant has intimidated or harassed a victim, potential witness, juror or judicial officer or has committed one (1) or more violations of the conditions of release and such violation or violations constituted a threat to the integrity of the judicial system.

History.
I.C., § 19-2919, as added by 2009, ch. 90, § 2, p. 259.

Compiler's Notes. Former § 19-2919 was repealed. See Compiler's Notes, § 19-2901.

19-2920. Revocation of bail — Insufficient surety. — (1) Private surety. Upon the filing of a verified petition alleging that the bail posted by a cash deposit or property bond has become insufficient by reason of bankruptcy, death or any other reason, the court may order the defendant and the private surety to appear before the court at a time certain for a bail revocation hearing. At the bail revocation hearing, if the court finds that the private surety is insufficient, the court may revoke the bail and recommit the defendant to the custody of the sheriff. If the defendant fails to appear for the bail revocation hearing, the court shall immediately issue a bench warrant for the defendant's arrest.

(2) Surety insurance company. Upon the filing of a verified petition alleging bail posted by a surety insurance company has become insufficient by reason of bankruptcy, receivership, suspension or revocation of authority to conduct business in the state of Idaho or any other reason, the court may order the defendant and the commercial surety or its agent to appear before the court at a time certain for a bail revocation hearing. At the bail revocation hearing, if the court finds that the commercial surety is insufficient, it may revoke the bail and recommit the defendant to the custody of the sheriff. If the defendant fails to appear for the bail revocation hearing, the court shall immediately issue a bench warrant for the defendant's arrest.

(3) In its order revoking bail, the court shall recite generally the facts upon which revocation of bail is founded and order that the defendant be recommitted to the custody of the sheriff of the county where the action is pending to be detained until legally released. The court shall set bail in the same or a new amount and impose any appropriate conditions of release.

History.
I.C., § 19-2920, as added by 2009, ch. 90, § 2, p. 259.

Compiler's Notes. Former § 19-2920 was repealed. See Compiler's Notes, § 19-2901.

19-2921. Order of recommitment — Readmittance to bail. — In its order revoking bail, the court shall recite generally the facts upon which revocation of bail is founded and order that the defendant be recommitted to the custody of the sheriff of the county where the action is pending to be

detained until legally released. If the offense is bailable, the court shall fix bail in a new amount and impose any appropriate conditions of release.

History.
I.C., § 19-2921, as added by 2009, ch. 90, § 2, p. 259.

Compiler's Notes. Former § 19-2921 was repealed. See Compiler's Notes, § 19-2901.

19-2922. Exoneration of bail. — The court shall order the bail exonerated in the following circumstances:

(1) The defendant has appeared for all court proceedings as ordered and all charges for which the bail has been posted have been resolved by acquittal, dismissal or sentencing;

(2) Written notice of the court's order of forfeiture was not mailed to the person posting bail or his designated agent within five (5) business days of the order of forfeiture;

(3) Written notice of the court's order to set aside the order of forfeiture and reinstating bail was not mailed to the person posting bail or his designated agent within five (5) business days of the order;

(4) Before any order of forfeiture, the defendant has been surrendered or has surrendered himself to the sheriff of the county where the action is pending and the certificate of surrender has been filed with the court as required in section 19-2913, Idaho Code;

(5) The defendant has appeared before the court within one hundred eighty (180) days of the court's order of forfeiture, unless the court has set aside the order of forfeiture and has reinstated bail pursuant to section 19-2916, Idaho Code; provided, that in those cases where the defendant was not returned by the person posting bail to the sheriff of the county where the action is pending, the court may condition the exoneration of bail and the setting aside of the forfeiture on payment by the person posting bail of any costs incurred by state or local authorities arising from the transport of the defendant to the jail facility of the county where the charges are pending. Such costs shall not exceed the amount of the bail posted;

(6) The court has revoked bail and has ordered that the defendant be recommitted.

History.
I.C., § 19-2922, as added by 2009, ch. 90, § 2, p. 259.

Compiler's Notes. Former § 19-2922 was repealed. See Compiler's Notes, § 19-2901.

Decisions Under Prior Law

In General.
This section refers only to the arrest of the defendant for surrender before forfeiture and a surety who procured the arrest of the defendant after forfeiture of the bond had been entered was not entitled to exoneration as provided in former § 19-2924. State v. Overby, 90 Idaho 41, 408 P.2d 155 (1965).

19-2923. Severability. — The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.

History.
I.C., § 19-2923, as added by 2009, ch. 90, § 2, p. 259.

Compiler's Notes. Former § 19-2923 was repealed. See Compiler's Notes, § 19-2901.

The term "this act" refers to S.L. 2009, ch. 90, which is codified as chapter 29, title 19, Idaho Code.

CHAPTER 30

WITNESSES IN CRIMINAL PROCEEDINGS

19-3002. Husband and wife as witnesses.

A.L.R. "Communications" within testimonial privilege of confidential communications between husband and wife as including knowledge derived from observation by one spouse of acts of other spouse. 23 A.L.R.6th 1.

19-3004A. Administrative subpoena — Electronic communication and remote computing services. — (1) A provider of an electronic communication service or remote computing service that is transacting or has transacted any business in the state shall disclose the following to a prosecuting attorney or the attorney general pursuant to an administrative subpoena issued by the prosecuting attorney or attorney general:

(a) Records and information in its possession containing the name, address, local and long distance telephone connection records, or records of session times and durations, length of service, including the start date; and

(b) Records and information in its possession containing the types of service utilized, telephone or instrument number or other subscriber number or identity, including any temporarily assigned network address; and

(c) Records and information in its possession relating to the means and source of payment for such service pertaining to a subscriber to or customer of such service.

The provider of an electronic communication service or remote computing service shall deliver the records to the prosecuting attorney or attorney general within fourteen (14) days of receipt of the subpoena.

(2) For the purpose of this section, the following definitions shall apply:

(a) "Electronic communication service" has the same meaning as provided in section 18-6701(13), Idaho Code.

(b) "Remote computing service" means the provision to the public of computer storage or processing service by means of an electronic communications system as defined in section 18-6701(12), Idaho Code.

(3) In order to obtain the records or information, the prosecuting attorney or attorney general shall certify on the face of the subpoena that there is reason to believe that the records or information being sought are relevant to a legitimate law enforcement investigation concerning a violation of

section 18-1505B, 18-1506, 18-1506A, 18-1507, 18-1508, 18-1508A, 18-1509, 18-1509A, 18-1515, 18-2202 or 18-6609, Idaho Code.

(4) No subpoena issued pursuant to this section shall demand records that disclose the content of electronic communications or subscriber account records disclosing internet locations which have been accessed including, but not limited to, websites, chat channels and news groups, but excluding servers used to initially access the internet. No recipient of a subpoena issued pursuant to this section shall provide any such content or records accessed, in response to the subpoena.

(5) On a motion made by the electronic communication service or remote computing service provider prior to the time for appearance or the production of documents under the subpoena issued pursuant to this section, a court of competent jurisdiction may quash or modify the administrative subpoena if the provider establishes that the records or other information requested are unusually voluminous in nature or if compliance with the subpoena would otherwise cause an undue burden on the service provider.

(6) No cause of action shall lie in any court against an electronic communication service or remote computing service provider, its officers, employees, agents or other specified persons for providing information, facilities or assistance in accordance with the terms of an administrative subpoena issued under this section.

(7) A person who is subpoenaed under this section and who fails to appear or produce materials as required by the subpoena, or who refuses to be sworn or give testimony, may be found to be in contempt of court. Proceedings to hold a person in contempt under this subsection may be brought in the county where the subpoena was issued.

(8) Nothing in this section shall limit the right of a prosecuting attorney or the attorney general to otherwise obtain records or information from a provider of electronic communication service or remote computing service pursuant to a search warrant, a court order or a grand jury or trial subpoena.

History.
I.C., § 19-3004A, as added by 2009, ch. 61, § 1, p. 166; am. 2012, ch. 269, § 5, p. 751.

Compiler's Notes. S.L. 2009, Chapter 61 became law without the signature of the governor.

The 2012 amendment, by ch. 269, deleted "18-1507A" from the list of references in subsection (3).

19-3006. Form of subpoena. — A subpoena authorized by section 19-3004, Idaho Code, must be substantially in the following form:

The state of Idaho to A.B.:

You are commanded to appear before C.D., a [district] [magistrate] judge, in .... county (or as the case may be), at (naming the place), on (stating the day and hour), as a witness in a criminal action prosecuted by the state of Idaho against E.F.

Given under my hand this .... day of ...., ...

G.H., [District] [Magistrate] Judge, (or "J.K., Prosecuting Attorney," or

"By order of the court, L.M., Clerk," or as the case may be).

If books, papers or documents are required, a direction to the following effect must be contained in the subpoena: "And you are required, also, to bring with you the following" (describing intelligibly the books, papers or documents required).

History.
Cr. Prac. 1864, §§ 539, 540, p. 279; R.S., R.C., & C.L., § 8149; C.S., § 9133; I.C.A., § 19-2905; am. 2002, ch. 32, § 6, p. 46; am. 2012, ch. 20, § 9, p. 66.

Compiler's Notes. The 2012 amendment, by ch. 20, in the form, twice substituted references to a district of magistrate judge for a reference to a justice of the peace.

19-3009. Compulsory attendance of witnesses. [Repealed.]

Repealed by S.L. 2012, ch. 20, § 10, effective July 1, 2012.

History.
Cr. Prac. 1864, § 545, p. 279; R.S., R.C., & C.L., § 8152; C.S., § 9136; I.C.A., § 19-2908.

CHAPTER 35

DISMISSAL OF ACTION

19-3501. When action may be dismissed.

Analysis

Good cause.
Speedy trial.
Waiver of right.

Good Cause.

Good cause existed for not holding defendant's trial within six months, as required by this section, because defendant's filing of pretrial motions clearly caused a delay in setting his trial. The amount of time the court took to resolve those motions was not excessive. The need to resolve the critical motion to suppress and a motion for reconsideration provided a substantial reason that rose to the level of legal cause or excuse for delay. State v. Livas, 147 Idaho 547, 211 P.3d 792 (Ct. App. 2009).

Because the reason for the delay in bringing defendant to trial on misdemeanor charges was on its face insufficient, the application of the *Barker v. Wingo*, 407 U.S. 514 (1972) balancing test to determine whether defendant's statutory speedy trial right had been violated was inappropriate. State v. Jacobson, — Idaho —, 283 P.3d 124 (Ct. App. 2012).

Defendant's right to a speedy trial was not violated where the state demonstrated good cause for the delay in bringing defendant to trial because witnesses were unavailable because they were active duty military personnel assigned to temporary duty outside the state. Further, the state's waiting for the conclusion of the Air Force investigation of the incident was reasonable. State v. Ciccone, — Idaho —, 297 P.3d 1147 (Ct. App. 2012).

Speedy Trial.

Magistrate properly denied defendant's motion to dismiss on speedy trial grounds. Charge had been amended from infraction to misdemeanor, and trial occurred within six months of amendment. There was no relation back to infraction charge, as it carried no statutory right to speedy trial. State v. Burtlow, 144 Idaho 455, 163 P.3d 244 (Ct. App. 2007).

Defendant failed to show his constitutional or statutory speedy trial rights were violated, because defendant stipulated multiple times to delays, there was no issue of oppressive pretrial incarceration, and it was defendant's choice to leave the state while charges were pending. State v. Risdon, — Idaho —, 296 P.3d 1091 (Ct. App. 2012).

Waiver of Right.

Where trial of a defendant has been postponed upon the defendant's request, the defendant has waived his rights under this section. It does not matter if the new trial is scheduled within or after the six month period set out in paragraph 2. State v. Folk, 151 Idaho 327, 256 P.3d 735 (2011).

19-3506. Effect of dismissal as bar.

Cited in: State v. Averett, 142 Idaho 879, 136 P.3d 350 (Ct. App. 2006).

CHAPTER 36

PROCEEDINGS AGAINST CORPORATIONS

SECTION.
19-3602. Form of summons.

19-3602. Form of summons. — The summons must be substantially in the following form:

County of (as the case may be):
The state of Idaho to the (naming the corporation):

You are hereby summoned to appear before me at (naming the place), on (specifying the day and hour), to answer a charge made against you upon the information of A.B. (or the presentment of the grand jury of the county, as the case may be), for (designating the offense generally).

Dated at the city or precinct of ...., this .... day of ...., ...

G.H., [District Judge] [Magistrate Judge].
(Or as the case may be.)

History.
Cr. Prac. 1874, § 584; R.S., R.C., & C.L., § 8223; C.S., § 9183; I.C.A., § 19-3502; am. 2002, ch. 32, § 7, p. 46; am. 2012, ch. 20, § 11, p. 66.

Compiler's Notes. The 2012 amendment, by ch. 20, substituted "[District Judge] [Magistrate Judge]" for "Justice of the Peace" near the end of the form.

CHAPTER 38

DISPOSAL OF PROPERTY ILLEGALLY HELD BY DEFENDANT

SECTION.
19-3807. Confiscation of firearms, explosives or contraband upon conviction.

19-3807. Confiscation of firearms, explosives or contraband upon conviction. — (1) At the time any person is convicted of a felony in any court of the state of Idaho, firearms, ammunition, bombs, nitroglycerin, or explosives of any nature, including illegal fireworks, or any other deadly weapons or contraband of any kind found in his possession or under his control at the time of his arrest may be confiscated and disposed of in accordance with the order of the court before which such person was tried. "Contraband" as used in this section shall mean any personal property, possession of which is illegal under the laws of the state of Idaho or the United States.

(2) Notice of confiscation proceedings shall be given to each owner or person who is believed to have an interest in the property in question by

serving a copy of the state's motion describing the property with a notice of hearing on the motion as follows:

(a) Upon each owner or interested party whose name and address is known, by mailing a copy of the state's motion to confiscate and notice of hearing by certified mail to the owner or party's last known address, or to his attorney;

(b) Upon all other owners or interested parties whose addresses are unknown, but who are believed to have an interest in the property, by publishing one (1) notice in a newspaper of general circulation in the county where the property was seized.

(3) Within twenty (20) days after the mailing or publication of the notice, the owner of the property in question and any other interested party may file with the court a claim to the property described in the motion to confiscate.

(4) If one (1) or more claims are filed, the confiscation proceeding shall be set for hearing at least thirty (30) days after the last timely claim is filed.

(5) At the confiscation hearing any person who has filed a timely claim may show by competent evidence that the property in question was not in the possession or control of the defendant at the time of his arrest or that the owner is innocent of any involvement in the acts which led to the defendant's arrest, in which case the court may return the property to the owner or interested person or order any other disposition which is appropriate under the circumstances.

(6) If no claim has been filed within twenty (20) days after the state's motion to confiscate and notice of hearing has been mailed or published, the court shall hear evidence concerning the defendant's possession and control of the property in question at the time of arrest. If it finds that the property was in the defendant's possession and control at the time of arrest or, if pursuant to subsection (5) of this section, the court rejects any claim which has been filed, the court may direct the delivery to the law enforcement agency which apprehended the defendant, for its use or for any other disposition in its discretion or, in the case of a firearm or ammunition, the court shall direct the delivery to the law enforcement agency which apprehended the defendant for disposition in accordance with section 55-403(4), Idaho Code.

History.

1941, ch. 53, § 1, p. 112; am. 1984, ch. 177, § 1, p. 423; am. 2005, ch. 217, § 1, p. 690.

Compiler's Notes. Section 2 of S.L. 2005, ch. 217 is compiled as § 55-403.

Appellate Review.

The threshold requirement of subsection (1) of this section is that a person be convicted of a felony in the state; because defendant's felony possession of a controlled substance conviction was vacated due to a previously entered plea agreement, there was no underlying felony conviction for purposes of forfeiture under subsection (1) of this section, and the district court's order allowing confiscation of defendant's firearm and baseball bat was vacated. State v. Peterson, 148 Idaho 593, 226 P.3d 535 (2010).

CHAPTER 39

PROCEEDINGS IN MAGISTRATE'S DIVISION OF THE DISTRICT COURT

19-3903. Issuance and form of warrant. — If the magistrate judge is satisfied therefrom that the offense complained of has been committed, he must issue a warrant of arrest, which must be substantially in the following form:

County of .....

The state of Idaho to any sheriff, constable, marshal or policeman, in this state:

Complaint, upon oath, having been this day made before me .... (magistrate judge), by C.D., that the offense of .... (designating it generally), has been committed, and accusing E.F. thereof; you are therefore commanded forthwith to arrest the above named E.F. and bring him before me forthwith at .... (naming place).

Witness my hand at ...., this .... day of ...., ... A.B.

History.

Cr. Prac. 1864, § 597, p. 287; R.S., R.C., & C.L., § 8281; C.S., § 9229; I.C.A., § 19-4003; am. 2002, ch. 32, § 8, p. 46; am. 2012, ch. 20, § 12, p. 66.

Compiler's Notes. The 2012 amendment, by ch. 20, substituted "magistrate judge" for "probate judge or justice of the peace" in the introductory paragraph; and, in the form, substituted "(magistrate judge)" for "(justice of the peace or probate judge, as the case may be)" in the second paragraph and deleted "(And if in probate court, seal of court.)" preceding "A.B." at the end of the last paragraph.

19-3904. Docket and minutes. — A docket must be kept by the magistrate judge, or by the clerk of the court, in which must be entered each action and the proceedings of the court therein.

History.

Cr. Prac. 1864, § 600, p. 288; R.S., R.C., & C.L., § 8282; C.S., § 9230; I.C.A., § 19-4004; am. 2012, ch. 20, § 13, p. 66.

Compiler's Notes. The 2012 amendment, by ch. 20, substituted "magistrate judge, or by the clerk of the court" for "justice of the peace, or by the clerk of the probate court."

19-3907. Change of venue — Grounds and application. [Repealed.]

Repealed by S.L. 2010, ch. 35, § 1, effective July 1, 2010.

History.
R.S., § 8285; am. 1907, p. 215, § 1; reen. R.C. & C.L., § 8285; C.S., § 9233; I.C.A., § 19-4007.

19-3908. Change of venue — Proceedings. [Repealed.]

Repealed by S.L. 2010, ch. 35, § 2, effective July 1, 2010.

History.
R.S., R.C., & C.L., § 8286; C.S., § 9234; I.C.A., § 19-4008.

19-3921. Proceedings on plea of guilty. — When the defendant pleads guilty, or is convicted either by the court or by a jury, the court must render judgment thereon of fine or imprisonment, or both, as the case may be: provided, however, it appearing to the court that it is a proper case, the court may, in its discretion, suspend the execution of judgment, and at such time, or any time during the period of sentence in a county jail, may put the defendant on probation on such terms and for such time as it may prescribe. The period of probation ordered by the court under this section under a conviction or plea of guilty for a misdemeanor, indictable or otherwise, may be for a period of not more than two (2) years; provided that the court may extend the period of probation to include the period of time during which the defendant is a participant in a problem solving court program and for a period of up to one (1) year after a defendant's graduation or termination from a problem solving court program. The court may withhold judgment on such terms and conditions as it deems necessary or expedient.

History.
Cr. Prac. 1864, § 612, p. 289; R.S., R.C., & C.L., § 8299; C.S., § 9247; I.C.A., § 19-4021; am. 1937, ch. 60, § 1, p. 82; am. 1949, ch. 145, § 1, p. 300; am. 1973, ch. 292, § 2, p. 615; am. 2012, ch. 46, § 2, p. 140.

Compiler's Notes. The 2012 amendment, by ch. 46, added "provided that the court may extend the period of probation to include the period of time during which the defendant is a participant in a problem solving court program and for a period of up to one (1) year after a defendant's graduation or termination from a problem solving court program" at the end of the second sentence.

Consecutive Sentences.
Trial court possessed authority to impose successive two-year periods of probation for each of defendant's misdemeanor convictions, regardless of the length of the suspended jail sentences. State v. Horejs, 143 Idaho 260, 141 P.3d 1129 (Ct. App. 2006).

19-3922. Payment of court ordered tests of breath or bodily fluid. — Whenever a court orders testing of breath or bodily fluids as a condition of probation, such costs for the tests shall be paid for by the probationer in addition to any supervision fee authorized under section 31-3201D, Idaho Code, to the agency providing the testing, provided the court may waive this requirement upon a showing of cause.

History.
I.C., § 19-3922, as added by 2012, ch. 109, § 2, p. 299.

19-3939. Undertaking for appearance of witnesses. [Repealed.]

Repealed by S.L. 2013, ch. 37, § 1, effective July 1, 2013.

History.
R.S., R.C., & C.L., § 8322; C.S., § 9265; I.C.A., § 19-4039.

Cross Reference. Appeals from magistrate to district court, Idaho R. Crim. P. 54.1 et seq.

19-3940. Transmission of papers. [Repealed.]

Repealed by S.L. 2013, ch. 37, § 1, effective July 1, 2013.

History.
R.S., R.C., & C.L., § 8323; C.S., § 9266; I.C.A., § 19-4040.

Cross Reference. Appeals from magistrate to district court, Idaho R. Crim. P. 54.1 et seq.

19-3941. Bail pending appeal. [Repealed.]

Repealed by S.L. 2013, ch. 37, § 1, effective July 1, 2013.

History.
R.S., R.C., & C.L., § 8324; C.S., § 9267; I.C.A., § 19-4041; am. 1987, ch. 157, § 1, p. 307; am. 1999, ch. 313, § 1, p. 779.

Cross Reference. Appeals from magistrate to district court, Idaho R. Crim. P. 54.1 et seq.

19-3942. Trial on appeal. [Repealed.]

Repealed by S.L. 2013, ch. 37, § 1, effective July 1, 2013.

History.
R.S., R.C., & C.L., § 8325; C.S., § 9268; I.C.A., § 19-4042.

Cross Reference. Appeals from magistrate to district court, Idaho R. Crim. P. 54.1 et seq.

19-3943. Costs to abide event. [Repealed.]

Repealed by S.L. 2013, ch. 37, § 1, effective July 1, 2013.

History.
R.S., R.C., & C.L., § 8326; C.S., § 9269; I.C.A., § 19-4043.

Cross Reference. Appeals from magistrate to district court, Idaho R. Crim. P. 54.1 et seq.

19-3944. Judgment against sureties for costs. [Repealed.]

Repealed by S.L. 2013, ch. 37, § 1, effective July 1, 2013.

History.
R.S., R.C., & C.L., § 8327; C.S., § 9270; I.C.A., § 19-4044.

Cross Reference. Appeals from magistrate to district court, Idaho R. Crim. P. 54.1 et seq.

19-3945. Jurors and witnesses — Fees and mileage — Application for subpoenas. — Witnesses before a special inquiry judge and in criminal cases in the magistrate division of district court, and witnesses in a coroner's inquest, are entitled to the same fees and mileage as provided in section 19-3008, Idaho Code, for witnesses in criminal proceedings in the district court, which must be paid out of the county treasury; provided, however, that when the state or the defendant requires the attendance of more than three (3) witnesses in its or his behalf, before such witnesses shall be subpoenaed at the county expense, or their fees and mileages be a charge against the county, the county attorney or defendant must make affidavit setting forth that they are witnesses whose evidence is material for the state

or the defense, and the facts showing such materiality, and that it or he cannot safely go to trial without them. In such case or cases, the court or judge thereof, at the time the application is made therefor, shall order a subpoena to issue to such of said witnesses as the court or judge thereof may deem material for the state or defendant, and the costs incurred by the process, and the fees and mileage of such witnesses, shall be paid in the same manner that the costs and fees of other witnesses are paid. Jurors in a coroner's inquest are entitled to the mileage and per diem payments as provided for jurors in section 2-215, Idaho Code.

History.
1905, p. 173, § 1; reen. R.C. & C.L., § 8338; C.S., § 9271; I.C.A., § 19-4045; am. 1939, ch. 20, § 1, p. 51; am. 1961, ch. 6, § 1, p. 8; am. 2012, ch. 18, § 1, p. 37.

Compiler's Notes. The 2012 amendment, by ch. 18, substituted "Witnesses before a special inquiry judge and in criminal cases in the magistrate division of district court, and witnesses in a coroner's inquest, are entitled to the same fees and mileage as provided in section 19-3008, Idaho Code, for witnesses in criminal proceedings in the district court" for "Witnesses before examining magistrates and in criminal cases in the probate and justice courts, and jurors and witnesses in a coroner's inquest, are entitled to four dollars ($4.00) per day for each day actually engaged in the trial of a case, and twenty-five cents (25¢) per mile, one way" at the beginning of the first sentence and added the last sentence.

19-3947. County misdemeanor probation office services. — Misdemeanor probation office services shall be as provided in section 31-878, Idaho Code.

History.
I.C., § 19-3947, as added by 2008, ch. 88, § 2, p. 243.

CHAPTER 42

HABEAS CORPUS AND INSTITUTIONAL LITIGATION PROCEDURES ACT

19-4203. Who may petition for a writ of habeas corpus.

Analysis

Applicability.
Grounds for writ.

Applicability.
Although a petition for a writ of habeas corpus is not the appropriate avenue to directly appeal the validity of a criminal conviction, a properly raised issue may be considered on a writ, without requiring a separate petition to be filed. Warren v. Craven, 152 Idaho 327, 271 P.3d 725 (Ct. App. 2012).

Grounds for Writ.
Claim that commission of pardons and parole denied a habeas petitioner access to documents in his file that were used to determine parole eligibility, inmate classification, prison employment and other matters, was properly dismissed by the magistrate because habeas corpus proceedings could be used to make certain challenges to confinement or unlawful conditions of confinement, but not to compel access to government records. Lake v. Newcomb, 140 Idaho 190, 90 P.3d 1272 (Ct. App. 2004).

Where habeas petitioner contended that he had not received credit for time he served in jail in Arizona after his arrest on an Idaho warrant for the escape offense, because the claim was previously presented on a motion for correction of the sentence under I.C.R. 35, it could not be presented again by a habeas corpus petition, and if and to the extent that petitioner contended that the sentencing court never acted upon his Rule 35 motion, that was a matter to be taken up with the sentencing court through a request for a rul-

ing on the motion. Lake v. Newcomb, 140 Idaho 190, 90 P.3d 1272 (Ct. App. 2004).

19-4205. Application for writ of habeas corpus by a prisoner.

Cited in: Matthews v. Jones, 147 Idaho 224, 207 P.3d 200 (Ct. App. 2009).

19-4206. Prisoners required to exhaust administrative remedies in conditions of confinement cases.

Analysis

Exhaustion of remedies.
Motion to amend petition.

Exhaustion of Remedies.

District court did not err in granting the employees' motion for summary judgment on the basis that the inmate did not exhaust his administrative remedies before filing a civil suit; the procedural and filing deadlines of a prison's administrative remedy process had to be complied with. Butters v. Valdez, 149 Idaho 764, 241 P.3d 7 (Ct. App. 2010).

Where defendant's arguments, on appeal of dismissal of a writ of habeas corpus, all concern the exhaustion of administrative remedies, or the unavailability of any administrative remedies, in regard to the commission of pardons and parole's conduct in denying him parole, the defendant has not asserted nor documented that he exhausted administrative remedies for any alleged misconduct on the part of the warden. Thus, the district court correctly held that the defendant failed to show that he exhausted his administrative remedies as to the warden. Burghart v. Carlin, 151 Idaho 730, 264 P.3d 71 (Ct. App. 2011).

Motion to Amend Petition.

Subsection (2) required a petitioner to submit, as part of his petition for habeas corpus relief, any documentation in his possession or within his reach showing participation in an applicable grievance process; however, the inmate attempted to cure the deficiency in his petition by filing a motion to amend his petition and a proposed amended petition with attached documentation of his attempts to pursue grievances; the district court erred by failing to identify any valid reason for not ruling on the inmate's motion to amend his petition to include supporting documentation of his attempts to exhaust grievance procedures prior to ruling on the warden's motion to dismiss. Drennon v. Fisher, 141 Idaho 942, 120 P.3d 1146 (Ct. App. 2005).

Inmate was required to exhaust available administrative remedies prior to filing his amended complaint against the prison and prison officials as his claims pertained to the conditions of his confinement and he did not assert that he was in imminent danger of serious physical injury. Drennon v. Idaho State Correctional Inst., 145 Idaho 598, 181 P.3d 524 (Ct. App. 2007).

19-4208. General procedures governing habeas corpus proceedings.

Cited in: Drennon v. Fisher, 141 Idaho 942, 120 P.3d 1146 (Ct. App. 2005); Hoots v. Craven, 146 Idaho 271, 192 P.3d 1095 (Ct. App. 2008).

19-4209. Procedures governing prisoner habeas corpus proceedings.

Analysis

Claim for monetary compensation.
Warnings.

Claim for Monetary Compensation.

Despite the district court's error in dismissing the inmate's entire petition for habeas corpus relief because it contained a claim for monetary compensation, the inmate's motion to amend was properly denied because he was not entitled to any other relief claimed. Hoots v. Craven, 146 Idaho 271, 192 P.3d 1095 (Ct. App. 2008).

Warnings.

Despite error in the district court's initial order of dismissal, inmate's motion to amend writ of habeas corpus was properly denied because he was not entitled to any of the relief claimed. The fact that commission director had previously chosen to continue inmate on

parole with warning instead of full violation did not end the Commission's ability to later consider those actions as violations of his parole and a basis for revocation. Hoots v. Craven, 146 Idaho 271, 192 P.3d 1095 (Ct. App. 2008).

19-4210. Discovery in habeas corpus proceedings.

Cited in: Drennon v. Fisher, 141 Idaho 942, 120 P.3d 1146 (Ct. App. 2005).

Discovery Not Allowed.

Claim that commission of pardons and parole denied a habeas petitioner access to documents in his file that were used to determine parole eligibility, inmate classification, prison employment and other matters, was properly dismissed by the magistrate because habeas corpus proceedings could be used to make certain challenges to confinement or unlawful conditions of confinement, but not to compel access to government records. Lake v. Newcomb, 140 Idaho 190, 90 P.3d 1272 (Ct. App. 2004).

In a habeas corpus proceeding, there was no need for the discovery of a psychological evaluation because it was not relevant to the issue of whether the evaluator was licensed; the state had stipulated that the evaluator in this particular case was not licensed. Dopp v. Idaho Comm'n of Pardons & Parole, 144 Idaho 402, 162 P.3d 781 (Ct. App. 2007).

19-4213. Relief available for constitutional violations during the course of revocation of parole.

Judicial Review.

The finder of fact in parole violation proceedings is the commission of pardons and parole, and a habeas court's role in reviewing those factual findings is limited to a determination whether substantial evidence was presented to support them. A defendant, whose parole has been revoked, is not entitled to an evidentiary hearing before a magistrate to relitigate the facts of the alleged parole violations. Matthews v. Jones, 147 Idaho 224, 207 P.3d 200 (Ct. App. 2009).

19-4214. Relief available for miscalculation of sentence.

Parole.

Magistrate erred in finding moot, a habeas petitioner's claim that the commission of pardons and parole violated the law by failing to grant him a parole hearing to consider his eligibility for institutional parole at any time during the service of his first two sentences, and the denial of an opportunity for institutional parole on his first two sentences carried potential collateral consequences of substantial magnitude because the denial of the opportunity for institutional parole potentially added nearly seven years to petitioner's overall period of incarceration. Lake v. Newcomb, 140 Idaho 190, 90 P.3d 1272 (Ct. App. 2004).

CHAPTER 43

CORONER'S INQUESTS

19-4301. County coroner to investigate deaths. — (1) When a county coroner is informed that a person has died, the county coroner shall investigate that death if:

(a) The death occurred as a result of violence, whether apparently by homicide, suicide or by accident;

(b) The death occurred under suspicious or unknown circumstances; or

(c) The death is of a stillborn child or any child if there is a reasonable articulable suspicion to believe that the death occurred without a known medical disease to account for the stillbirth or child's death.

(2) If a death occurs that is not attended by a physician and the cause of death cannot be certified by a physician, the coroner must refer the investigation of the death to the sheriff of the county or the chief of police of the city in which the incident causing the death occurred or, if such county or city is unknown, to the sheriff or chief of police of the county or city where the body was found. The investigation shall be the responsibility of the sheriff or chief of police. Upon completion of the investigation, a written report shall be provided to the coroner of the county in which the death occurred or, if such county is unknown, to the coroner of the county where the body was found.

(3) A coroner in the county where the incident causing the death occurred or, if such county is unknown, the coroner in the county where the body was found, may conduct an inquest if there are reasonable grounds to believe as a result of the investigation that the death occurred as provided in subsection (1) of this section.

(4) If an inquest is to be conducted, the coroner shall summon six (6) persons qualified by law to serve as jurors for the inquest.

(5) Nothing in this section shall be construed to affect the tenets of any church or religious belief.

History.
I.C., § 19-4301, as added by 2005, ch. 80, § 2, p. 291.

Compiler's Notes. Former § 19-4301, was added by 1961, ch. 262, § 2 and amended by 1963, ch. 4, § 1, was repealed by S.L. 2005, ch. 80, § 1.

19-4301A. Deaths to be reported to law enforcement officials and coroner. — (1) Where any death occurs which would be subject to investigation by the coroner under section 19-4301(1), Idaho Code, the person who finds or has custody of the body shall promptly notify either the coroner, who shall notify the appropriate law enforcement agency, or a law enforcement officer or agency, which shall notify the coroner. Pending arrival of a law enforcement officer, the person finding or having custody of the body shall take reasonable precautions to preserve the body and body fluids and the scene of the event shall not be disturbed by anyone until authorization is given by the law enforcement officer conducting the investigation.

(2) Except as otherwise provided in subsection (3) of this section, any person who fails to notify the coroner or law enforcement pursuant to subsection (1) of this section shall be guilty of a misdemeanor and shall be punished by up to one (1) year in the county jail or by a fine not to exceed one thousand dollars ($1,000), or by both such imprisonment and fine.

(3) Any person who, with the intent to prevent discovery of the manner of death, fails to notify or delays notification to the coroner or law enforcement pursuant to subsection (1) of this section, shall be guilty of a felony and shall be punished by imprisonment in the state prison for a term not to exceed ten (10) years or by a fine not to exceed fifty thousand dollars ($50,000) or by both such fine and imprisonment.

History.
I.C., § 19-4301A, as added by 1961, ch. 262, § 3, p. 459; am. 2006, ch. 239, § 1, p. 724.

Compiler's Notes. The 2006 amendment, by ch. 239, in subsection (1), updated the section reference, inserted "either" following "notify," and added "or a law enforcement officer or agency, which shall notify the coroner" to the end of the first sentence; and added the subsection (1) designation and subsections (2) and (3).

19-4304. Compelling attendance of witnesses. — A witness served with a subpoena may be compelled to attend and testify, or punished by the coroner for disobedience, in like manner as upon a subpoena issued by a magistrate judge.

History.
1863, p. 475, § 138; R.S., R.C., & C.L., § 8380; C.S., § 9312; I.C.A., § 19-4404; am. 2012, ch. 20, § 14, p. 66.

Compiler's Notes. The 2012 amendment, by ch. 20, substituted "magistrate judge" for "justice of the peace" at the end of the section.

CHAPTER 44
SEARCH WARRANTS

19-4402. Use of search warrant.

Description.
Motion to suppress was properly denied. Pursuant to a warrant, there was probable cause to seize all the currency found since the officer did not have details about the type of currency taken during the theft, the amount of currency taken, or the currency that defendant already possessed lawfully. Despite defendant's assertions to the contrary, "currency" was a sufficiently particular description of the item to be seized. State v. Teal, 145 Idaho 985, 188 P.3d 927 (Ct. App. 2008).

19-4406. Issuance of warrant.

Cited in: State v. Pruss, 145 Idaho 623, 181 P.3d 1231 (2008).

Signature.
Telephonic search warrant was not rendered invalid because the magistrate judge did not sign an original of the warrant when he authorized a peace officer to affix the magistrate's signature to a duplicate original of the warrant. State v. Fees, 140 Idaho 81, 90 P.3d 306 (2004).

For purposes of this section, the word "signature" is defined as "a person's name or mark written by that person or at the person's direction." State v. Fees, 140 Idaho 81, 90 P.3d 306 (2004).

Where a telephonic warrant was signed by a prosecuting attorney at the direction of a magistrate judge, this procedural defect did not call into question the finding of probable cause to justify issuance of the warrant. The district court erred by granting defendant's motion to suppress evidence based on the procedural defect. State v. Zueger, 143 Idaho 647, 152 P.3d 8 (2006).

19-4407. Form of warrant. — The warrant must be in substantially the following form:

County of .....

The state of Idaho to any sheriff, constable, marshal, or policeman in the county of ....: Proof, by affidavit, having been this day made before me by (naming every person whose affidavit has been taken), that (stating the grounds of the application, or, if the affidavit be not positive, that there is

probable cause for believing that — stating the ground of the application in the same manner), you are therefore commanded, in the daytime (or at any time of the day or night, as the case may be) to make immediate search of the person of C.D. (or in the house situated ...., describing it or any other place to be searched, with reasonable particularity, as the case may be) for the .... following property: (describing it with reasonable particularity); and if you find the same or any part thereof, to bring it forthwith before me at .... (stating the place).

Given under my hand, and dated this .... day of ...., ...

E.T., [District Judge] [Magistrate Judge].
(Or as the case may be.)

History.

Cr. Prac. 1864, § 635, p. 291; R.S., R.C., & C.L., § 8396; C.S., § 9325; I.C.A., § 19-4507; am. 2002, ch. 32, § 10, p. 46; am. 2012, ch. 20, § 15, p. 66.

Compiler's Notes. The 2012 amendment, by ch. 20, substituted "[District Judge] [Magistrate Judge]" for "Justice of the Peace" near the end of the form.

19-4408. Service of warrant. — A search warrant may in all cases be served by any of the officers mentioned in its directions, but by no other person, except in aid of the officer on his requiring it. Service of a warrant may be made by the officers mentioned in its directions in person, by mail or facsimile transmission, or by electronic mail. Unless an investigation necessitates otherwise, the officer should attempt notification on the person whom it is served prior to electronic mail service.

History.

Cr. Prac. 1864, § 636, p. 292; R.S., R.C., & C.L., § 8397; C.S., § 9326; I.C.A., § 19-4508; am. 2007, ch. 105, § 1, p. 309.

Compiler's Notes. The 2007 amendment, by ch. 105, deleted "he being present and acting in its execution" from the end of the first sentence, and added the last two sentences.

A.L.R. Propriety of execution of no-knock search warrant. 59 A.L.R.6th 311.

19-4409. Service of warrant — Breaking open doors.

Knock and Announce.

District court erred in denying suppression motion of defendant charged with possession of a controlled substance with intent to deliver; the five seconds the police waited after a knock and announce was not a reasonable length of time to allow an occupant of defendant's home to answer the door in the early morning, when no exigency existed or arose and the alleged volume of drugs in the home was itself insufficient to create reasonable suspicion of an exigency allowing the police to almost immediately enter the home after knocking and announcing. State v. Ramos, 142 Idaho 628, 130 P.3d 1166 (Ct. App. 2005).

In defendant's motion for post-conviction relief after being convicted of marijuana trafficking, trial court improperly refused to either appoint counsel or to give notice as to why the claim was frivolous. Although the allegations in defendant's claim for relief were insufficient to state a claim, a subsequent letter to the court raised a valid issue regarding trial counsel's failure to seek suppression of evidence based on a violation of the knock and announce rule, and under the lenient standard which should have been applied, this was sufficient to raise the possibility of a valid claim. Plant v. State, 143 Idaho 758, 152 P.3d 629 (Ct. App. 2006).

In determining how long after the police knock and announce themselves that they must wait to break open the door to a defendant's workshop/residence, the inquiry is whether the officers could reasonably suspect that someone in the workshop may attempt to destroy evidence and how long the officers could reasonably suspect it would take to do so. Because the exigency justifies an entry to prevent the destruction of evidence, a reasonable wait time would be less than the time the officers reasonably suspected it would take to do so. State v. Kofoed, 147 Idaho 296, 208 P.3d 278 (2009).

A.L.R. Propriety of execution of no-knock search warrant. 59 A.L.R.6th 311.

19-4411. Service of warrant at night.

Daytime.
"Daytime" extends from dawn to darkness where darkness is the point at which insufficient natural light exists with which to distinguish another's features (quoting *State v. Burnside*, 113 Idaho 65, 741 P.2d 352 (Ct. App. 1987)). State v. Skurlock, 150 Idaho 404, 247 P.3d 631 (2011).

19-4412. Time for executing warrant.

Cited in: Wolf v. State, 152 Idaho 64, 266 P.3d 1169 (Ct. App. 2011).

CHAPTER 45

PROCEEDINGS AGAINST FUGITIVES FROM JUSTICE

19-4501. Definitions. — Where appearing in this chapter:

(1) The term "executive authority" includes the governor, and any person performing the functions of governor in a state other than this state;

(2) The term "governor" includes any person performing the functions of governor by authority of the law of this state; and

(3) The term "state" refers to a state other than this state, and includes

any other state or territory, organized or unorganized, of the United States of America.

History.
1927, ch. 29, § 1, p. 31; I.C.A., § 19-4601; am. 2008, ch. 136, § 1, p. 386.

Compiler's Notes. The 2008 amendment, by ch. 136, rewrote the section to the extent that a detailed comparison is impracticable.

S.L. 2008, Chapter 136 revised Idaho's extradition procedures to conform to the 1936 Uniform Criminal Extradition Act and federal law, 18 U.S.C.S. §§ 3181 to 3195, to facilitate interstate extradition.

19-4502. Fugitives from justice — Duty of governor. — Subject to the provisions of this chapter, and the provisions of the Constitution of the United States controlling, and any and all acts of congress enacted in pursuance thereof, it is the duty of the governor of this state to have arrested and delivered up to the executive authority of any other state of the United States any person charged in that state with treason, felony or other crime, who has fled from justice and is found in this state.

History.
1927, ch. 29, § 2, p. 31; I.C.A., § 19-4602; am. 2008, ch. 136, § 2, p. 386.

Compiler's Notes. The 2008 amendment, by ch. 136, rewrote the section catchline, which formerly read: "Criminals to be delivered upon requisition," substituted "provisions of this chapter" for "qualifications of this act," and inserted "any and all" and "enacted."

S.L. 2008, Chapter 136 revised Idaho's extradition procedures to conform to the 1936 Uniform Criminal Extradition Act and federal law, 18 U.S.C.S. §§ 3181 to 3195, to facilitate interstate extradition.

Extradition Not Needed.

Defendant, a certified member of the Shoshone-Bannock tribes, was legally arrested and the district court of Bannock County has personal jurisdiction over him without the need for extradition, where the defendant was stopped for driving under the influence on an interstate highway within the boundaries on an Indian reservation. State and tribal police share concurrent jurisdiction at the place of the arrest. State v. Beasley, 146 Idaho 594, 199 P.3d 771 (Ct. App. 2008).

19-4503. Form of demand. — No demand for the extradition of a person charged with crime in another state shall be recognized by the governor unless in writing, alleging, except in cases arising under section 19-4506, Idaho Code, that the accused was present in the demanding state at the time of the commission of the alleged crime, and that thereafter he fled from the state. Such demand must be accompanied by a copy of an indictment or by information supported by affidavit of probable cause, judicial finding of probable cause, or plea of guilty, as reflected in any document from the court in the demanding state, or by affidavit made before a judge or magistrate, together with a copy of any warrant which was issued thereupon, or by a copy of a judgment of conviction or sentence imposed in execution thereof, together with a statement by the executive authority of the demanding state that the person claimed has fled the state after being charged with a crime, escaped from confinement, or has broken the terms of his bail, probation or parole. The indictment, information, or affidavit made before the judge or magistrate must substantially charge the person demanded with having committed a crime under the law of that state, and the copy of the indictment, information, affidavit, or judgment of conviction or sentence must be authenticated by the executive authority making the demand.

History.
1927, ch. 29, § 3, p. 31; I.C.A., § 19-4603; am. 2008, ch. 136, § 3, p. 386.

Compiler's Notes. The 2008 amendment, by ch. 136, rewrote the section, which formerly read: "No demand for the extradition of a person charged with crime in another state shall be recognized by the governor unless in writing and accompanied by a copy of an indictment found or by an information supported by affidavit in the state having jurisdiction of the crime, or by a copy of an affidavit made before a magistrate there, together with a copy of any warrant which was issued thereon. The indictment, information, or affidavit made before the magistrate must substantially charge the person demanded with having committed a crime under the law of that state; and the copy must be authenticated by the executive authority making the demand, which shall be prima facie evidence of its truth."

S.L. 2008, Chapter 136 revised Idaho's extradition procedures to conform to the 1936 Uniform Criminal Extradition Act and federal law, 18 U.S.C.S. §§ 3181 to 3195, to facilitate interstate extradition.

19-4505. What papers must show. [Repealed.]

Compiler's Notes. This section, which comprised 1927, ch. 29, § 5, p. 31; I.C.A., § 19-4605; am. 1983, ch. 130, § 1, p. 326, was repealed by S.L. 2008, ch. 136, § 4.

19-4506. Extradition of persons not present in demanding state at time of commission of crime. — The governor of this state may also surrender, on demand of the executive authority of any other state, any person in this state charged in such other state in the manner provided in section 19-4503, Idaho Code, with committing an act in this state, or in a third state, intentionally resulting in a crime in the state whose executive authority is making the demand, and the provisions of this chapter not otherwise inconsistent shall apply to such cases, even though the accused was not in that state at the time of the commission of the crime, and has not fled therefrom.

History.
1927, ch. 29, § 6, p. 31; I.C.A., § 19-4606; am. 1983, ch. 130, § 2, p. 326; am. 2008, ch. 136, § 5, p. 387.

Compiler's Notes. The 2008 amendment, by ch. 136, updated the section reference in the first sentence in light of 2008 legislation.

S.L. 2008, Chapter 136 revised Idaho's extradition procedures to conform to the 1936 Uniform Criminal Extradition Act and federal law, 18 U.S.C.S. §§ 3181 to 3195, to facilitate interstate extradition.

19-4507. Issue of governor's warrant of arrest — Recitals. — If the governor decides that the demand should be complied with, he shall sign a warrant of arrest, which shall be sealed with the state seal, and be directed to any peace officer or other person whom he may think fit to entrust with the execution thereof. The warrant must substantially recite the facts necessary to the validity of its issuance.

History.
S.L. 1927, ch. 29, § 7, p. 31; I.C.A., § 19-4607; am. 2008, ch. 136, § 6, p. 387.

Compiler's Notes. The 2008 amendment, by ch. 136, in the section catchline, added "Issue of" and deleted "Issuance and" preceding "recitals"; and substituted "any peace officer or other person" for "a sheriff, marshal, coroner or other person" in the text.

S.L. 2008, Chapter 136 revised Idaho's extradition procedures to conform to the 1936 Uniform Criminal Extradition Act and federal law, 18 U.S.C.S. §§ 3181 to 3195, to facilitate interstate extradition.

19-4508. Manner and place of execution — Facsimile and electronic service. — (1) Such warrant shall authorize the peace officer or other person to whom directed to arrest the accused at any time and any place where he may be found within the state and to command the aid of all peace officers or other persons in the execution of the warrant, and to deliver the accused, subject to the provisions of this chapter, to the duly authorized agent of the demanding state.

(2) A certified copy of the warrant, signed by the governor, may be sent via facsimile or in electronic format, to be executed pursuant to subsection (1) of this section.

History.

1927, ch. 29, § 8, p. 31; I.C.A., § 19-4608; am. 2008, ch. 136, § 7, p. 387.

Compiler's Notes. The 2008 amendment, by ch. 136, rewrote the section catchline, which formerly read: "Execution of warrant-Manner and place"; added the subsection (1) designation, and therein inserted the first occurrence of "peace" and "time and any," and substituted "peace officers or other persons" for "sheriffs and other peace officers" and "this chapter" for "this act"; and added subsection (2).

S.L. 2008, Chapter 136 revised Idaho's extradition procedures to conform to the 1936 Uniform Criminal Extradition Act and federal law, 18 U.S.C.S. §§ 3181 to 3195, to facilitate interstate extradition.

19-4509. Authority of arresting officer. — Every such peace officer or other person empowered to make the arrest, shall have the same authority, in arresting the accused, to command assistance therein, as peace officers have by law in the execution of any criminal process directed to them, with like penalties against those who refuse their assistance.

History.

1927, ch. 29, § 9, p. 31; I.C.A., § 19-4609; am. 2008, ch. 136, § 8, p. 388.

Compiler's Notes. The 2008 amendment, by ch. 136, inserted the first occurrence of "peace," and substituted "peace officers" for "sheriffs and other officers."

S.L. 2008, Chapter 136 revised Idaho's extradition procedures to conform to the 1936 Uniform Criminal Extradition Act and federal law, 18 U.S.C.S. §§ 3181 to 3195, to facilitate interstate extradition.

19-4510. Rights of accused person — Application for writ of habeas corpus. — No person arrested upon such warrant shall be delivered over to the appointed agent for the executive authority demanding him unless he shall first be taken forthwith before a judge or magistrate of a court of record in this state, who shall inform him of the demand made for his surrender and of the crime with which he is charged, and that he has the right to demand and procure legal counsel; if the prisoner or his counsel shall state that he or they desire to test the legality of his arrest, the judge or magistrate of such court of record shall fix a reasonable time to be allowed him within which to apply for a writ of habeas corpus. When such writ is applied for, notice thereof, and of the time and place of hearing thereon, shall be given to the prosecuting officer of the county in which the arrest is made and in which the accused is in custody, and to the said agent of the demanding state.

History.

1927, ch. 29, § 10, p. 31; I.C.A., § 19-4610; am. 2008, ch. 136, § 9, p. 388.

Compiler's Notes. The 2008 amendment, by ch. 136, rewrote the section to the extent that a detailed comparison is impracticable.

S.L. 2008, Chapter 136 revised Idaho's extradition procedures to conform to the 1936 Uniform Criminal Extradition Act and federal law, 18 U.S.C.S. §§ 3181 to 3195, to facilitate interstate extradition.

19-4511. Penalty for noncompliance with section 19-4510, Idaho Code. — Any officer who shall deliver to the agent of the demanding state a person in his custody for extradition under the governor's warrant, in willful disobedience to section 19-4510, Idaho Code, shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than one thousand dollars ($1,000), or be imprisoned not more than six (6) months, or both.

History.
1927, ch. 29, § 11, p. 31; I.C.A., § 19-4611; am. 2008, ch. 136, § 10, p. 388.

Compiler's Notes. The 2008 amendment, by ch. 136, in the section catchline and in text, substituted "section 19-4510, Idaho Code" for "preceding section" and "the last section," respectively; and in text, inserted "willful" and "one thousand dollars," and deleted "in the county jail" following "imprisoned."

S.L. 2008, Chapter 136 revised Idaho's extradition procedures to conform to the 1936 Uniform Criminal Extradition Act and federal law, 18 U.S.C.S. §§ 3181 to 3195, to facilitate interstate extradition.

19-4512. Confinement in jail when necessary. — The officer or person executing the governor's warrant of arrest, or the agent of the demanding state to whom the prisoner may have been delivered, may when necessary, confine the prisoner in the jail of any county or city through which he may pass, and the keeper of such jail must receive and safely keep the prisoner until the officer or person having charge of him is ready to proceed on his route, such officer or person being chargeable with the expense of keeping; provided however, that such officer or agent shall produce and show to the keeper of such jail, satisfactory written evidence of the fact that he is actually transporting such prisoner to the demanding state after a requisition by the executive authority of such demanding state. Such prisoner shall not be entitled to demand a new requisition while in this state.

History.
1927, ch. 29, § 12, p. 31; I.C.A., § 19-4612; am. 2008, ch. 136, § 11, p. 388.

Compiler's Notes. The 2008 amendment, by ch. 136, in the first sentence, inserted the second and third occurrence of "officer or" and added the proviso; and added the last sentence.

S.L. 2008, Chapter 136 revised Idaho's extradition procedures to conform to the 1936 Uniform Criminal Extradition Act and federal law, 18 U.S.C.S. §§ 3181 to 3195, to facilitate interstate extradition.

19-4513. Arrest prior to requisition. — (1) Except in cases arising under section 19-4506, Idaho Code, a judge or magistrate shall issue a warrant directed to any peace officer commanding him to apprehend the person named therein, wherever he may be found in this state, and to bring him before the same or any other judge or magistrate which may be available in or of convenient access to the place where the arrest may be made, to answer to the charge or complaint and affidavit:

(a) Whenever any person within this state is charged on the oath of any credible person before any judge or magistrate of this state with the commission of any crime in any other state and has fled from justice, or

has been convicted of a crime in that state and has escaped from confinement, or has broken the terms of his bail, probation or parole; or

(b) Whenever complaint is made before any judge or magistrate in this state setting forth on the affidavit of any credible person in another state that a crime has been committed in such other state and that the accused has been charged in such state with the commission of the crime and has fled from justice, or has been convicted of a crime in that state and has escaped from confinement, or has broken the terms of his bail, probation or parole and is believed to be in this state.

(2) A certified copy of the sworn charge or complaint and affidavit upon which the warrant is issued shall be attached to the warrant.

History.

I.C., § 19-4513, as added by 2008, ch. 136, § 13, p. 389.

Compiler's Notes. Former § 19-4513, which comprised I.C., § 19-4513, as added by 1979, ch. 228, § 2, p. 626, was repealed by S.L. 2008, ch. 136, § 12.

S.L. 2008, Chapter 136 revised Idaho's extradition procedures to conform to the 1936 Uniform Criminal Extradition Act and federal law, 18 U.S.C.S. §§ 3181 to 3195, to facilitate interstate extradition.

19-4514. Arrest without a warrant. — The arrest of a person may be lawfully made by any peace officer or a private person, without a warrant upon reasonable information that the accused stands charged in the courts of a state with a crime punishable by death or imprisonment for a term exceeding one (1) year. When so arrested the accused must be taken before a judge or magistrate with all practicable speed, and complaint must be made against him under oath setting forth the grounds for the arrest as provided in section 19-4513, Idaho Code, and thereafter his answer shall be heard as if he had been arrested on a warrant.

History.

I.C., § 19-4514, as added by 1979, ch. 228, § 3, p. 626; am. 2008, ch. 136, § 14, p. 389.

Compiler's Notes. The 2008 amendment, by ch. 136, rewrote the section to the extent that a detailed comparison is impracticable.

S.L. 2008, Chapter 136 revised Idaho's extradition procedures to conform to the 1936 Uniform Criminal Extradition Act and federal law, 18 U.S.C.S. §§ 3181 to 3195, to facilitate interstate extradition.

19-4515. Commitment to await requisition — Bail. — If from the examination before the judge or magistrate it appears that the person held is the person charged with having committed the crime alleged and, except in cases arising under section 19-4506, Idaho Code, that he has fled from justice, the judge or magistrate must, by a warrant reciting the accusation, commit him to the county jail for such a time not exceeding thirty (30) days and specified in the warrant, as will enable the arrest of the accused to be made under a warrant of the governor on a requisition of the executive authority of the state having jurisdiction of the offense, unless the accused gives bail as provided in section 19-4516, Idaho Code, or until he shall be legally discharged.

History.
I.C., § 19-4515, as added by 2008, ch. 136, § 16, p. 390.

Compiler's Notes. Former § 19-4515, which comprised I.C., § 19-4515, as added by 1979, ch. 228, § 4, p. 626, was repealed by S.L. 2008, ch. 136, § 15.

S.L. 2008, Chapter 136 revised Idaho's extradition procedures to conform to the 1936 Uniform Criminal Extradition Act and federal law, 18 U.S.C.S. §§ 3181 to 3195, to facilitate interstate extradition.

19-4516. Bail — In what cases — Conditions of bond. — Unless the offense with which the prisoner is charged is shown to be an offense punishable by death or life imprisonment under the laws of the state in which it was committed, a judge or magistrate in this state may admit the person arrested to bail by bond with sufficient sureties, and in such sum as he deems proper, conditioned for his appearance before him at a time specified in such bond, and for his surrender, to be arrested upon the warrant of the governor of this state.

History.
1927, ch. 29, § 16, p. 31; I.C.A., § 19-4616; am. 2002, ch. 130, § 1, p. 360; am. 2008, ch. 136, § 17, p. 390.

Compiler's Notes. The 2008 amendment, by ch. 136, rewrote the section to the extent that a detailed comparison is impracticable.

S.L. 2008, Chapter 136 revised Idaho's extradition procedures to conform to the 1936 Uniform Criminal Extradition Act and federal law, 18 U.S.C.S. §§ 3181 to 3195, to facilitate interstate extradition.

A.L.R. Allowance of bail in international extradition proceedings. 60 A.L.R. Fed. 2d 203.

19-4517. Extension of time of commitment. — If the accused is not arrested under warrant of the governor by the expiration of the time specified in the warrant or bond, as provided in section 19-4515, Idaho Code, a judge or magistrate may discharge him or may recommit him for a further period not to exceed sixty (60) days, or a judge or magistrate may again take bail for his appearance and surrender, as provided in section 19-4516, Idaho Code, but within a period not to exceed sixty (60) days after the date of such new bond.

History.
1927, ch. 29, § 17, p. 31; I.C.A., § 19-4617; am. 2008, ch. 136, § 18, p. 390.

Compiler's Notes. The 2008 amendment, by ch. 136, rewrote the section to the extent that a detailed comparison is impracticable.

S.L. 2008, Chapter 136 revised Idaho's extradition procedures to conform to the 1936 Uniform Criminal Extradition Act and federal law, 18 U.S.C.S. §§ 3181 to 3195, to facilitate interstate extradition.

19-4518. Forfeiture of bail. — If the prisoner is admitted to bail, and fails to appear and surrender himself according to the conditions of his bond, the judge or magistrate, by proper order, shall declare the bond forfeited and order his immediate arrest without warrant if he is within the state. Recovery may be had on such bond in the name of this state, as in the case of other bonds given by the accused in criminal proceedings within this state.

History.
1927, ch. 29, § 18, p. 31; I.C.A., § 19-4618; am. 2008, ch. 136, § 19, p. 391.

Compiler's Notes. The 2008 amendment, by ch. 136, in the first sentence, substituted "judge or magistrate" for "court," and added

"order his immediate arrest without warrant if he is within the state"; and in the second sentence, substituted "on such bond in the name of this state" for "thereon in the name of the state," and deleted "or undertaking" following "bonds."

S.L. 2008, Chapter 136 revised Idaho's extradition procedures to conform to the 1936 Uniform Criminal Extradition Act and federal law, 18 U.S.C.S. §§ 3181 to 3195, to facilitate interstate extradition.

19-4519. Persons under criminal prosecution in this state at time of requisition. — If a criminal prosecution has been instituted against such person under the laws of this state and is still pending, the governor in his discretion, either may surrender such person on demand of the executive authority of another state or hold him until he has been tried and discharged, or convicted and punished in this state.

History.
1927, ch. 29, § 19, p. 31; I.C.A., § 19-4619; am. 2008, ch. 136, § 20, p. 391.

Compiler's Notes. The 2008 amendment, by ch. 136, rewrote the section catchline, which formerly read: "Procedure if prosecution already instituted."

S.L. 2008, Chapter 136 revised Idaho's extradition procedures to conform to the 1936 Uniform Criminal Extradition Act and federal law, 18 U.S.C.S. §§ 3181 to 3195, to facilitate interstate extradition.

19-4520. Guilt or innocence of accused — When inquired into. — The guilt or innocence of the accused as to the crime of which he is charged may not be inquired into by the governor or in any proceeding after the demand for extradition is presented to the governor, except as it may be involved in identifying the person held as the person charged with the crime.

History.
1927, ch. 29, § 20, p. 31; I.C.A., § 19-4620; am. 2008, ch. 136, § 21, p. 391.

Compiler's Notes. The 2008 amendment, by ch. 136, deleted "accompanied by a charge of crime in legal form as above provided" following "extradition," and substituted "is presented" for "shall have been presented."

S.L. 2008, Chapter 136 revised Idaho's extradition procedures to conform to the 1936 Uniform Criminal Extradition Act and federal law, 18 U.S.C.S. §§ 3181 to 3195, to facilitate interstate extradition.

19-4521. Governor may recall warrant or issue alias. — The governor may recall his warrant of arrest or may issue another warrant whenever he deems proper.

History.
1927, ch. 29, § 21, p. 31; I.C.A., § 19-4621; am. 2008, ch. 136, § 22, p. 391.

Compiler's Notes. The 2008 amendment, by ch. 136, made a minor punctuation change.

S.L. 2008, Chapter 136 revised Idaho's extradition procedures to conform to the 1936 Uniform Criminal Extradition Act and federal law, 18 U.S.C.S. §§ 3181 to 3195, to facilitate interstate extradition.

19-4522. Fugitives from this state — Duty of governor. — Whenever the governor of this state shall demand a person charged with crime, escaping from confinement, or breaking the terms of his bail, probation or parole in this state, from the executive authority of any other state, or from the chief justice or an associate justice of the supreme court of the District of Columbia, or other official authorized to receive such demand under the laws of the United States, he shall issue a warrant under the seal of this

state, to some agent, commanding him to receive the person so charged and convey him to the proper officer of the county in this state in which the offense was committed.

History.
1927, ch. 29, § 22, p. 31; I.C.A., § 19-4622; am. 1990, ch. 314, § 1, p. 858; am. 2008, ch. 136, § 23, p. 391.

Compiler's Notes. The 2008 amendment, by ch. 136, in the section catchline, added "Duty of governor"; and in text, substituted "executive authority" for "chief executive," inserted "or other official," and deleted "if delivered to him" following "person so charged."

S.L. 2008, Chapter 136 revised Idaho's extradition procedures to conform to the 1936 Uniform Criminal Extradition Act and federal law, 18 U.S.C.S. §§ 3181 to 3195, to facilitate interstate extradition.

19-4523. Application for issuance of requisition — By whom made — Contents. — (1) When the return to this state of a person charged with crime in this state is required, the prosecuting attorney shall present to the governor his written application for a requisition for the return of the person charged, in which application shall be stated the name of the person so charged, the crime charged against him, and the approximate time, place and circumstances of its commission, the state in which he is believed to be, including the location of the accused therein at the time the application is made, and certifying that, in the opinion of the said prosecuting attorney, the ends of justice require the arrest and return of the accused to this state for trial, and that the proceeding is not instituted to enforce a private claim.

(2) When the return to this state is required of a person who has been convicted of a crime in this state and has escaped from confinement or broken the terms of his bail, probation or parole, the prosecuting attorney of the county in which the offense was committed, the director of the commission of pardons and parole, or the director of the department of correction or his designee, or head of any institution or facility operated by or under contract with the department of correction, or sheriff of the county from which escape was made, shall present to the governor a written application for a requisition for the return of such person, in which application shall be stated the name of the person, the crime of which he was convicted, the circumstances of his escape from confinement or of the breach of the terms of his bail, probation or parole, and the state in which he is believed to be, including the location of the person therein at the time application is made.

(3) The application shall be verified by affidavit, shall be executed in duplicate and shall be accompanied by two (2) certified copies of the indictment returned, or information and affidavit filed, or of the complaint made to the judge or magistrate, stating the offense with which the accused is charged, or of the judgment of conviction or sentence. The prosecuting officer, director of the department of correction or his designee, or head of any institution or facility operated by or under contract with the department of correction, may also attach such further affidavits and other documents in duplicate as he shall deem proper to be submitted with such application. One (1) copy of the application, with the action of the governor indicated by endorsement thereon, and one (1) of the certified copies of the indictment, complaint, information and affidavits, or of the judgment of conviction or sentence shall be filed in the office of the secretary of state to remain of

record in that office. The other copies of all papers shall be forwarded with the governor's requisition.

History.
1927, ch. 29, § 23, p. 31; I.C.A., § 19-4623; am. 1990, ch. 314, § 2, p. 858; am. 2002, ch. 28, § 1, p. 34; am. 2008, ch. 136, § 24, p. 392.

Compiler's Notes. The 2008 amendment, by ch. 136, rewrote the section to the extent that a detailed comparison is impracticable.

S.L. 2008, Chapter 136 revised Idaho's extradition procedures to conform to the 1936 Uniform Criminal Extradition Act and federal law, 18 U.S.C.S. §§ 3181 to 3195, to facilitate interstate extradition.

19-4524. Immunity from service of process in certain civil actions. — A person brought into this state by or after waiver of extradition based on a criminal charge, shall not be subject to service of personal process in civil actions arising out of the same facts as the criminal proceedings for which he is being or has been returned, until he has been convicted in the criminal proceeding, or if acquitted, until he has had reasonable opportunity to return to the state from which he was extradited.

History.
1927, ch. 29, § 24, p. 31; I.C.A., § 19-4624; am. 2008, ch. 136, § 25, p. 393.

Compiler's Notes. The 2008 amendment, by ch. 136, rewrote the section catchline, which formerly read: "Exemption from civil process"; and in text, substituted "by or after waiver of extradition" for "on extradition," "criminal proceedings for which he is being or has been returned" for "criminal proceeding to answer which he is returned," and "reasonable opportunity" for "ample opportunity."

S.L. 2008, Chapter 136 revised Idaho's extradition procedures to conform to the 1936 Uniform Criminal Extradition Act and federal law, 18 U.S.C.S. §§ 3181 to 3195, to facilitate interstate extradition.

19-4525. No right of asylum — No immunity from other criminal prosecution while in this state. — After a person has been brought back to this state by or after waiver of extradition proceedings, he may be tried in this state for other crimes which he may be charged with having committed here, as well as that specified in the requisition for his extradition.

History.
1927, ch. 29, § 25, p. 31; I.C.A., § 19-4625; am. 2008, ch. 136, § 26, p. 393.

Compiler's Notes. The 2008 amendment, by ch. 136, in the section catchline, added "No immunity from other criminal prosecution while in this state"; and in text, substituted "upon extradition" for "by or after waiver of extradition."

S.L. 2008, Chapter 136 revised Idaho's extradition procedures to conform to the 1936 Uniform Criminal Extradition Act and federal law, 18 U.S.C.S. §§ 3181 to 3195, to facilitate interstate extradition.

19-4526. Interpretation. — The provisions of this chapter shall be so interpreted and construed as to effectuate the general purposes to make uniform the law of those states which enact it.

History.
1927, ch. 29, § 26, p. 31; I.C.A., § 19-4626; am. 2008, ch. 136, § 27, p. 393.

Compiler's Notes. The 2008 amendment, by ch. 136, substituted "The provisions of this chapter" for "This act" and "the general purposes" for "its general purpose."

S.L. 2008, Chapter 136 revised Idaho's extradition procedures to conform to the 1936 Uniform Criminal Extradition Act and federal law, 18 U.S.C.S. §§ 3181 to 3195, to facilitate interstate extradition.

19-4527. [Amended and Redesignated.]

Compiler's Notes. Former § 19-4527 was amended and redesignated as § 19-4531 by S.L. 2008, ch. 136, § 28.

19-4528. Costs and expenses. — When the governor of this state, in the exercise of the authority conferred by section 2 of article 4 of the Constitution of the United States, or by the laws of this state, demands from the executive authority of any state or territory of the United States, or of any foreign government, the surrender to the authorities of this state of a fugitive from justice, who has been found and arrested in such state, territory, or foreign government, the accounts of the person employed by him to bring back such fugitive must be audited by the board of examiners and paid out of the state treasury, provided that in any case where a person against whom criminal proceedings are pending in any court of this state is to be brought into this state for such proceedings, whether with or without any demand or proceedings by the governor of this state and there is no appropriation of state funds available for the purpose at the time, reasonable compensation for the services of any person employed to bring the defendant in such criminal proceedings to this state and his expenses and the expenses on the account of the said defendant may be allowed and paid at the discretion of the board of county commissioners of the county where such criminal proceedings are pending from the general fund of said county, but no compensation for services as distinguished from expenses other than the regular salary shall be allowed any sheriff or deputy sheriff from either state or county funds.

History.

R.S., § 8425; am. R.C. & C.L., § 8425; C.S., § 9348; am. 1927, ch. 44, § 1, p. 59; I.C.A., § 19-4631; am. 2008, ch. 136, § 29, p. 393.

Compiler's Notes. The 2008 amendment, by ch. 136, rewrote the section catchline, which formerly read: "Claims for services of executive agents."

S.L. 2008, Chapter 136 revised Idaho's extradition procedures to conform to the 1936 Uniform Criminal Extradition Act and federal law, 18 U.S.C.S. §§ 3181 to 3195, to facilitate interstate extradition.

19-4529. Extradition of persons imprisoned or charged in another state or who have left demanding state involuntarily — Authorized signature of governor. — (1) When it is desired to have returned to this state a person charged in this state with a crime, and such person is imprisoned or is held under criminal proceedings then pending against him in another state, the governor of this state may agree with the executive authority of such other state for the extradition of such person before the conclusion of such proceedings or his term of sentence in such other state, upon condition that such person be returned to such other state at the expense of this state as soon as the prosecution in this state is terminated.

(2) The governor of this state may also surrender on demand of the executive authority of any other state any person in this state who is charged in the manner provided in section 19-4523, Idaho Code, with having

violated the laws of the state whose executive authority is making the demand, even though such person left the demanding state involuntarily.

(3) Any written, stamped, photocopied or electronic signature of the governor on documents executed pursuant to subsections (1) and (2) of this section, applied at his direction and under his supervision, is deemed to be the authorized signature of the governor.

History.

I.C., § 19-4529, as added by 2008, ch. 136, § 31, p. 394.

Compiler's Notes. Former § 19-4529, which comprised R.S., R.C., & C.L., § 8426; C.S., § 9349; I.C.A., § 19-4632, was repealed by S.L. 2008, ch. 136, § 30.

S.L. 2008, Chapter 136 revised Idaho's extradition procedures to conform to the 1936 Uniform Criminal Extradition Act and federal law, 18 U.S.C.S. §§ 3181 to 3195, to facilitate interstate extradition.

19-4530. Written waiver of extradition proceedings. — (1) Any person who is arrested in this state and who is charged with having committed a crime in another state or alleged to have escaped from confinement or broken the terms of his bail, probation or parole may waive the issuance and service of the warrant provided for in sections 19-4507 and 19-4508, Idaho Code, and all other procedures incidental to extradition proceedings by executing or subscribing in the presence of a judge or magistrate of a court of record within this state a writing which states that he consents to return to the demanding state, except that before the waiver is executed or subscribed to by the person it is the duty of the judge or magistrate to inform the person of his right to the issuance or service of a warrant of extradition and the right to contest extradition by habeas corpus as provided in section 19-4510, Idaho Code.

(2) If the consent is duly executed, the judge or magistrate shall direct the officer who has custody of the person to deliver the person promptly to the accredited agent or agents of the demanding state and to deliver or cause to be delivered to the agent or agents a copy of the consent.

(3) Notwithstanding the provisions of subsections (1) and (2) of this section, a law enforcement agency holding a person who is alleged to have broken the terms of his probation, parole, bail or other release shall immediately deliver the person to the duly authorized agent of the demanding state without the requirement of a governor's warrant if all of the following apply:

(a) The person has signed a prior waiver of extradition as a term of his current probation, parole, bail or other release in the demanding state.

(b) The law enforcement agency holding the person has received both of the following:

(i) An authenticated copy of the prior waiver of extradition signed by the person.

(ii) A photograph and fingerprints properly identifying the person as the person who signed the waiver.

(4) The delivery of a fugitive to an agent of the demanding state does not constitute a waiver by this state of its right, power or privilege to regain custody of the person by extradition, detainer proceedings or other process

for the purpose of trial, sentencing or punishment for any criminal offense charged against the person in this state.

(5) In any criminal proceeding wherein a court in this state has issued a warrant for the arrest of a person and that person was arrested in any other state, territory or possession of the United States, and that person waives extradition and consents to return to this state, the sheriff of the county where the warrant was issued may contract with an agent for the return of such person to this state, or the sheriff or his deputy may return such person to this state.

History.
I.C., § 19-4530, as added by 2008, ch. 136, § 32, p. 394.

Compiler's Notes. Former § 19-4530, which comprised 1969, ch. 129, § 1, p. 395, was repealed by S.L. 2008, ch. 136, § 30.

S.L. 2008, Chapter 136 revised Idaho's extradition procedures to conform to the 1936 Uniform Criminal Extradition Act and federal law, 18 U.S.C.S. §§ 3181 to 3195, to facilitate interstate extradition.

19-4531. Short title. — This chapter may be cited as the "Uniform Criminal Extradition Act."

History.
1927, ch. 29, § 29, p. 31; I.C.A., § 19-4629; am. and redesig. 2008, ch. 136, § 28, p. 393.

Compiler's Notes. The 2008 amendment, by ch. 136, redesignated the section from § 19-4527 and substituted "This chapter" for "This act."

Former § 19-4531, which comprised 1969, ch. 129, § 2, p. 395, was repealed by S.L. 2008, ch. 136, § 30.

S.L. 2008, Chapter 136 revised Idaho's extradition procedures to conform to the 1936 Uniform Criminal Extradition Act and federal law, 18 U.S.C.S. §§ 3181 to 3195, to facilitate interstate extradition.

19-4532. Hearing — Order of court. [Repealed.]

Compiler's Notes. This section, which comprised 1969, ch. 129, § 3, p. 395, was repealed by S.L. 2008, ch. 136, § 30.

S.L. 2008, Chapter 136 revised Idaho's extradition procedures to conform to the 1936 Uniform Criminal Extradition Act and federal law, 18 U.S.C.S. §§ 3181 to 3195, to facilitate interstate extradition.

19-4533. Construction. [Repealed.]

Compiler's Notes. This section, which comprised 1969, ch. 129, § 5, p. 395, was repealed by S.L. 2008, ch. 136, § 30.

S.L. 2008, Chapter 136 revised Idaho's extradition procedures to conform to the 1936 Uniform Criminal Extradition Act and federal law, 18 U.S.C.S. §§ 3181 to 3195, to facilitate interstate extradition.

19-4534. Short title. [Repealed.]

Compiler's Notes. This section, which comprised 1969, ch. 129, § 6, p. 395, was repealed by S.L. 2008, ch. 136, § 30.

S.L. 2008, Chapter 136 revised Idaho's extradition procedures to conform to the 1936 Uniform Criminal Extradition Act and federal law, 18 U.S.C.S. §§ 3181 to 3195, to facilitate interstate extradition.

CHAPTER 47

DISPOSITIONS OF FINES, FORFEITURES, AND COSTS

19-4701. Fines, forfeitures, and costs — Disposition — Satisfaction of judgment. [Repealed.]

Compiler's Notes. This section, which comprised 1903, p. 433, § 1; reen. R.C. & C.L., § 8440; C.S., § 9351; am. 1929, ch. 52, § 1, p. 71; I.C.A., § 19-4801, was repealed by S.L. 2009, ch. 96, § 1.

19-4705. Payment of fines and forfeitures — Satisfaction of judgment — Disposition — Apportionment. — (1) Except as otherwise provided in subsection (2) of this section:

(a) All fines and forfeitures collected pursuant to the judgment of any court of the state shall be remitted to the court in which the judgment was rendered. The judgment shall then be satisfied by entry in the docket of the court. The clerk of the court shall daily remit all fines and forfeitures to the county auditor who shall at the end of each month apportion the proceeds according to the provisions of this chapter. Other existing laws regarding the disposition of fines and forfeitures are hereby repealed to the extent such laws are inconsistent with the provisions of this chapter except as provided in section 49-1013(5), Idaho Code.

(b) Fines and forfeitures remitted for violations of fish and game laws shall be apportioned two and one-half percent (2 1/2%) to the state treasurer for deposit in the state general fund, ten percent (10%) to the search and rescue account, twenty-two and one-half percent (22 1/2%) to the district court fund and sixty-five percent (65%) to the fish and game fund.

(c) Fines and forfeitures remitted for violations of state motor vehicle laws, for violation of state driving privilege laws, and for violation of state laws prohibiting driving while under the influence of alcohol, drugs or any other intoxicating substances, shall be apportioned ten percent (10%) to the state treasurer of which eighty-six percent (86%) shall be deposited to the state general fund and fourteen percent (14%) shall be deposited to the peace officers standards and training fund authorized in section 19-5116, Idaho Code, forty-five percent (45%) to the state treasurer for deposit in the highway distribution account, twenty-two and one-half percent (22 1/2%) to the district court fund and twenty-two and one-half percent (22 1/2%) to the state treasurer for deposit in the public school income fund; provided, however, that fines and forfeitures remitted for violation of state motor vehicle laws, for violation of state driving privilege laws, and for violation of state laws prohibiting driving while under the

influence of alcohol, drugs or any other intoxicating substances, where an arrest is made or a citation is issued by a city law enforcement official, or by a law enforcement official of a governmental agency under contract to provide law enforcement services for a city, shall be apportioned ten percent (10%) to the state treasurer of which eighty-six percent (86%) shall be deposited to the state general fund and fourteen percent (14%) shall be deposited to the peace officers standards and training fund authorized in section 19-5116, Idaho Code, and ninety percent (90%) to the city whose officer made the arrest or issued the citation.

(d) Fines and forfeitures remitted for violation of any state law not involving fish and game laws, or motor vehicle laws, or state driving privilege laws, or state laws prohibiting driving while under the influence of alcohol, drugs or any other intoxicating substances, shall be apportioned ten percent (10%) to the state treasurer of which eighty-six percent (86%) shall be deposited to the state general fund and fourteen percent (14%) shall be deposited to the peace officers standards and training fund authorized in section 19-5116, Idaho Code, and ninety percent (90%) to the district court fund of the county in which the violation occurred.

(e) Fines and forfeitures remitted for violation of county ordinances shall be apportioned ten percent (10%) to the state treasurer of which eighty-six percent (86%) shall be deposited to the state general fund and fourteen percent (14%) shall be deposited to the peace officers standards and training fund authorized in section 19-5116, Idaho Code, and ninety percent (90%) to the district court fund of the county whose ordinance was violated.

(f) Fines and forfeitures remitted for violation of city ordinances shall be apportioned ten percent (10%) to the state treasurer of which eighty-six percent (86%) shall be deposited to the state general fund and fourteen percent (14%) shall be deposited to the peace officers standards and training fund authorized in section 19-5116, Idaho Code, and ninety percent (90%) to the city whose ordinance was violated.

(g) Fines and forfeitures remitted for violations not specified in this chapter shall be apportioned ten percent (10%) to the state treasurer of which eighty-six percent (86%) shall be deposited to the state general fund and fourteen percent (14%) shall be deposited to the peace officers standards and training fund authorized in section 19-5116, Idaho Code, and ninety percent (90%) to the district court fund of the county in which the violation occurred except in cases where a duly designated officer of any city police department or city law enforcement official shall have made the arrest for any such violation, in which case ninety percent (90%) shall be apportioned to the city whose officer made the arrest.

(h) Fines and forfeitures remitted for violations involving registrations of motorcycles or motor-driven cycles used off highways, snowmobiles, or use of winter recreation parking areas shall be apportioned ten percent (10%) to the state treasurer of which eighty-six percent (86%) shall be deposited to the state general fund and fourteen percent (14%) shall be deposited to the peace officers standards and training fund authorized in section 19-5116, Idaho Code, and ninety percent (90%) to the general fund of the county or city whose law enforcement official issued the citation.

(i) Fines and forfeitures remitted for violations of overweight laws as provided in section 49-1013(3), Idaho Code, shall be deposited one hundred percent (100%) into the highway distribution account.

(2) Any fine or forfeiture remitted for any misdemeanor violation for which an increase in the maximum fine became effective on or after July 1, 2005, shall be apportioned as follows:

(a) Any funds remitted, up to the maximum amount that could have been imposed before July 1, 2005, as a fine for the misdemeanor violation, shall be apportioned according to the applicable provisions of subsection (1) of this section; and

(b) Any other funds remitted, in excess of the maximum amount that could have been imposed before July 1, 2005, as a fine for the misdemeanor violation, shall be remitted to the state treasurer and shall be deposited in the drug court, mental health court and family court services fund as set forth in section 1-1625, Idaho Code.

(3) As used in this section, the term "city law enforcement official" shall include an official of any governmental agency which is providing law enforcement services to a city in accordance with the terms of a contract or agreement, when such official makes the arrest or issues a citation within the geographical limits of the city and when the contract or agreement provides for payment to the city of fines and forfeitures resulting from such service.

History.

1969, ch. 136, § 1, p. 420; am. 1971, ch. 65, § 1, p. 149; am. 1971, ch. 102, § 1, p. 221; am. 1972, ch. 6, § 1, p. 8; am. 1976, ch. 307, § 1, p. 1052; am. 1978, ch. 285, § 1, p. 692; am. 1981, ch. 84, § 1, p. 116; am. 1983, ch. 187, § 1, p. 506; am. 1984, ch. 161, § 1, p. 399; am. 1984, ch. 195, § 2, p. 445; am. 1986, ch. 333, § 1, p. 817; am. 1991, ch. 226, § 5, p. 538; am. 1993, ch. 311, § 1, p. 1146; am. 1998, ch. 426, § 1, p. 1342; am. 2001, ch. 179, § 1, p. 604; am. 2005, ch. 114, § 1, p. 365; am. 2005, ch. 360, § 2, p. 1144; am. 2006, ch. 71, § 20, p. 216; am. 2011, ch. 151, § 8, p. 414.

Compiler's Notes. This section was amended by two 2005 acts which appear to be compatible and have been compiled together.

The 2005 amendment, by ch. 114, substituted "eighty-six percent (86%)" for "ninety percent (90%)" and "fourteen percent (14%)" for "ten percent (10%)" throughout the section.

The 2005 amendment, by ch. 360, added the designation (1) and the introductory paragraph, added subsection (2), and redesignated former paragraph (j) as present subsection (3).

Section 2 of S.L. 2005, ch. 114 is compiled as § 31-3201A.

Sections 1 and 3 of S.L. 2005, ch. 360 are compiled as §§ 1-1625 and 23-217, respectively.

The 2006 amendment, by ch. 71, substituted "this chapter" for "this act" throughout the section; substituted "fund" for "account" in subsection (1)(b); and inserted "on or after" in the introductory paragraph of subsection (2).

The 2011 amendment, by ch. 151, updated the section reference in paragraph (1)(a).

Reimbursement.

Although the district court has authority over the clerk of the district court to order return of undisbursed funds, where a conviction was vacated and the defendant sought reimbursement for fines and costs he paid, once the funds had been disbursed into the district court fund they were subject to the authority of the board of county commissioners. State v. Peterson, — Idaho —, 280 P.3d 184 (Ct. App. 2012).

19-4708. Collection of debts owed to courts — Contracts for collection. — (1) The supreme court, or the clerks of the district court with the approval of the administrative district judge, may enter into contracts in accordance with this section for collection services for debts owed to courts. The cost of collection shall be paid by the defendant as an administrative

surcharge when the defendant fails to pay any amount ordered by the court and the court utilizes the services of a contracting agent pursuant to this section.

(2) As used in this section:

(a) "Contracting agent" means a person, firm or other entity who contracts to provide collection services.

(b) "Cost of collection" means the fee specified in contracts to be paid to or retained by a contracting agent for collection services.

(c) "Debts owed to courts" means any assessment of fines, court costs, surcharges, penalties, fees, restitution, moneys expended in providing counsel and other defense services to indigent defendants or other charges which a court judgment has ordered to be paid to the court in criminal cases, and which remain unpaid in whole or in part, and includes any interest or penalties on such unpaid amounts as provided for in the judgment or by law.

(3) The supreme court may adopt rules as deemed appropriate for the administration of this section, including procedures to be used in the negotiation and execution of contracts pursuant to this section, procedures to be followed by courts which utilize collection services under such contracts, and procedures for the compromise of debts owed to courts in criminal cases.

(4) Each contract entered into pursuant to this section shall specify the scope of work to be performed and provide for a fee to be paid to or retained by the contracting agent for collection services. Such fee shall be designated as the cost of collection, and shall not exceed thirty-three percent (33%) of the amount collected. The cost of collection shall be deducted from the amount collected but shall not be deducted from the debts owed to courts.

(5) Contracts entered into shall provide for the payment of any amounts collected to the clerk of the district court for the court in which the debt being collected originated after first deducting the collection fee. In accounting for amounts collected from any person pursuant to this section, the district court clerk shall credit the person's amount owed in the amount of the net proceeds collected and shall not reduce the amount owed by any person by that portion of any payment which constitutes the cost of collection pursuant to this section.

(6) With the appropriate cost of collection paid to the contracting agent as agreed upon in the contract, the clerk shall then distribute the amounts collected in accordance with the law.

History.

I.C., § 19-4708, as added by 2000, ch. 330, § 1, p. 1109; am. 2009, ch. 102, § 1, p. 312; am. 2011, ch. 14, § 1, p. 42.

Compiler's Notes. The 2009 amendment, by ch. 102, inserted "restitution" in subsection (2)(c).

The 2011 amendment, by ch. 14, inserted "supreme court, or the" near the beginning of subsection (1).

CHAPTER 49

UNIFORM POST-CONVICTION PROCEDURE ACT

SECTION.

19-4901. Remedy — To whom available — Conditions. — (a) Any person who has been convicted of, or sentenced for, a crime and who claims:

(1) That the conviction or the sentence was in violation of the constitution of the United States or the constitution or laws of this state;

(2) That the court was without jurisdiction to impose sentence;

(3) That the sentence exceeds the maximum authorized by law;

(4) That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;

(5) That his sentence has expired, his probation, or conditional release was unlawfully revoked by the court in which he was convicted, or that he is otherwise unlawfully held in custody or other restraint;

(6) Subject to the provisions of section 19-4902(b) through (g), Idaho Code, that the petitioner is innocent of the offense; or

(7) That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding, or remedy: may institute, without paying a filing fee, a proceeding under this act to secure relief.

(b) This remedy is not a substitute for nor does it affect any remedy incident to the proceedings in the trial court, or of an appeal from the sentence or conviction. Any issue which could have been raised on direct appeal, but was not, is forfeited and may not be considered in post-conviction proceedings, unless it appears to the court, on the basis of a substantial factual showing by affidavit, deposition or otherwise, that the asserted basis for relief raises a substantial doubt about the reliability of the finding of guilt and could not, in the exercise of due diligence, have been presented earlier. Except as otherwise provided in this act, it comprehends and takes the place of all other common law, statutory, or other remedies heretofore available for challenging the validity of the conviction or sentence. It shall be used exclusively in place of them.

History.

1967, ch. 25, § 1, p. 42; am. 1975, ch. 8, § 1, p. 13; am. 1986, ch. 126, § 1, p. 326; am. 2001, ch. 317, § 2, p. 1126; am. 2010, ch. 135, § 2, p. 287.

Compiler's Notes. The 2010 amendment, by ch. 135, substituted "19-4902(b) through (g)" for "19-4902(b) through (f)" in paragraph (a)(6).

Cited in: Murphy v. State, 143 Idaho 139, 139 P.3d 741 (Ct. App. 2006); Roeder v. State, 144 Idaho 415, 162 P.3d 794 (Ct. App. 2007); Baldwin v. State, 145 Idaho 148, 177 P.3d 362 (2008); Sheahan v. State, 146 Idaho 101, 190 P.3d 920 (Ct. App. 2008); Nelson v. Blades, 2009 U.S. Dist. LEXIS 24645 (D. Idaho Mar. 23, 2009); Hughes v. State, 148 Idaho 448, 224 P.3d 515 (Ct. App. 2009).

ANALYSIS

Application.

Challenge to length of sentence.
Dismissal of application.
Ineffective assistance of counsel.
Relief denied.
Timeliness.

Application.

DNA testing showed that hairs on a murder victim's clothing, and scrapings from her fingernails, did not come from the convicted inmate; this evidence did not mean the inmate was entitled to relief because there was no evidence that the hairs or the material scraped from the victim's fingernails necessarily came from her attacker. Fields v. State, 151 Idaho 18, 253 P.3d 692 (2011).

Challenge to Length of Sentence.

A challenge to the length of a sentence on cruel and unusual punishment grounds in post-conviction proceedings is barred by the doctrine of res judicata when the applicant argued on direct appeal that the sentence was excessive under state law reasonableness standards. Knutsen v. State, 144 Idaho 433, 163 P.3d 222 (Ct. App. 2007).

Dismissal of Application.

District court properly dismissed an applicant's request for post-conviction relief because the applicant did not articulate any reason or point to any allegation or evidence as to why the request should survive the bar of subsection (b). Barcella v. State, 148 Idaho 469, 224 P.3d 536 (Ct. App. 2009).

Ineffective Assistance of Counsel.

Defendant failed to raise any material issues of fact warranting an evidentiary hearing with regard to whether his trial counsel provided ineffective assistance by depriving him of his right to testify, because he failed to demonstrate a reasonable probability that had he testified, the jury's verdict would have been different. Kuehl v. State, 145 Idaho 607, 181 P.3d 533 (Ct. App. 2008).

In a post-conviction proceeding challenging an attorney's failure to pursue a motion in the underlying criminal action, the district court may consider the probability of success of the motion in question in determining whether the attorney's inactivity constituted incompetent performance. Where a defendant was convicted based on evidence obtained during a warrantless search of a trunk incident to a lawful custodial arrest of an occupant of an automobile, a motion to suppress the seized evidence may have succeeded, if a motion had been filed. Hoffman v. State, — Idaho —, 277 P.3d 1050 (Ct. App. 2012).

Relief Denied.

Where plea agreement provided that defendant's brothers, who were initially charged with numerous felonies, would each be only charged with one count of accessory to a felony and provided that the state would work with federal authorities in order to ensure that defendant's sisters were not charged with any crimes, and defendant stated that he was making a fully-informed decision and that he agreed with the plea agreement, but wanted to put on the record that he was pleading guilty for his family, it cannot be said that the plea was not voluntary. Mendiola v. State, 150 Idaho 345, 247 P.3d 210 (Ct. App. 2010).

Where defendant filed an "Amended Motion for Withdrawal of Plea of Guilty and Motion for Post-Conviction Relief" in his criminal case five months after the judgment of conviction was entered, the motion was time barred by Criminal Rule 33(c) and could not be treated as a petition for postconviction relief. State v. Allen, — Idaho —, 283 P.3d 114 (Ct. App. 2012).

Timeliness.

In order for the statute of limitations under the Uniform Post-Conviction Procedure Act, § 19-4901 et seq., to be tolled on account of mental illness, an unrepresented petitioner must show that he suffered from a serious mental illness which rendered him incompetent to understand his legal right to bring an action within a year or otherwise rendered him incapable of pursuing that right. Chico-Rodriguez v. State, 141 Idaho 579, 114 P.3d 137 (Ct. App. 2005).

Idaho Law Review. Clarity and Balance: Appellate Review of Harmless Error, Fundamental Error, and Prosecutorial Misconduct After *State v. Perry*, Case Note. 48 Idaho L. Rev. 85 (2011).

19-4902. Commencement of proceedings — Verification — Filing — Service — DNA testing. — (a) A proceeding is commenced by filing an application verified by the applicant with the clerk of the district court in which the conviction took place. An application may be filed at any time within one (1) year from the expiration of the time for appeal or from the determination of an appeal or from the determination of a proceeding following an appeal, whichever is later. Facts within the personal knowledge of the applicant and the authenticity of all documents and exhibits included in or attached to the application must be sworn to affirmatively as true and

correct. The supreme court may prescribe the form of the application and verification. The clerk shall docket the application upon its receipt and promptly bring it to the attention of the court and deliver a copy to the prosecuting attorney.

(b) A petitioner may, at any time, file a petition before the trial court that entered the judgment of conviction in his or her case for the performance of fingerprint or forensic deoxyribonucleic acid (DNA) testing on evidence that was secured in relation to the trial which resulted in his or her conviction but which was not subject to the testing that is now requested because the technology for the testing was not available at the time of trial. The clerk shall docket the application upon its receipt and promptly bring it to the attention of the court and deliver a copy to the prosecuting attorney.

(c) The petitioner must present a prima facie case that:

(1) Identity was an issue in the trial which resulted in his or her conviction; and

(2) The evidence to be tested has been subject to a chain of custody sufficient to establish that such evidence has not been substituted, tampered with, replaced or altered in any material aspect.

(d) A petitioner who pleaded guilty in the underlying case may file a petition under subsection (b) of this section.

(e) The trial court shall allow the testing under reasonable conditions designed to protect the state's interests in the integrity of the evidence and the testing process upon a determination that:

(1) The result of the testing has the scientific potential to produce new, noncumulative evidence that would show that it is more probable than not that the petitioner is innocent; and

(2) The testing method requested would likely produce admissible results under the Idaho rules of evidence.

(f) In the event the fingerprint or forensic DNA test results demonstrate, in light of all admissible evidence, that the petitioner is not the person who committed the offense, the court shall order the appropriate relief.

(g) The cost of the forensic DNA test shall be at the petitioner's expense, except to the extent the petitioner qualifies for the test at public expense pursuant to chapter 8, title 19, Idaho Code, in which case the fingerprint or forensic DNA test shall be performed by, and paid for by funds allocated for, Idaho state police forensic services, provided the requested method of testing or specific technology is validated by the lab, within the laboratory accreditation scope, and laboratory staff are qualified and satisfactorily performing proficiency testing in the testing method. If the laboratory does not offer the specific type of testing required, the Idaho state police shall not be required to outsource the testing or in any way pay for or reimburse any entity for the testing to be performed. For the purposes of this subsection, "validated" means the accumulation of test data within the laboratory to demonstrate that established methods and procedures perform as expected in the laboratory. The petitioner may choose an ISO/IEC 17025 or an American society of crime laboratory directors/laboratory accreditation board accredited DNA testing laboratory to perform the DNA testing. Such testing shall be at the petitioner's expense.

History.

1967, ch. 25, § 2, p. 42; am. 1979, ch. 133, § 1, p. 428; am. 1988, ch. 76, § 1, p. 131; am. 1993, ch. 265, § 1, p. 898; am. 1996, ch. 420, § 2, p. 1398; am. 2001, ch. 317, § 3, p. 1126; am. 2010, ch. 135, § 3, p. 287; am. 2012, ch. 180, § 1, p. 471.

Compiler's Notes. The 2010 amendment, by ch. 135, in subsection (b), deleted the second sentence, which read: "The petition must be filed by July 1, 2002, or within one (1) year after the filing of the judgment of conviction, whichever is later"; added subsection (d) and redesignated the subsequent subsections accordingly; and added the last two sentences in subsection (g).

The 2012 amendment, by ch. 180, in subsection (g), inserted the proviso at the end of the first sentence and added the second and third sentences.

Section 2 of S.L. 2012, ch. 180 declared an emergency. Approved March 29, 2012.

Cited in: Kirkland v. State, 143 Idaho 544, 149 P.3d 819 (2006); Kriebel v. State, 148 Idaho 188, 219 P.3d 1204 (Ct. App. 2009); Rhoades v. State, 148 Idaho 215, 220 P.3d 571 (2009).

Editor's note: The time limitation for filing a post-conviction petition for fingerprint or DNA testing, which was set at 5 years by S.L. 1979, ch. 133, § 1 and then at one year by S.L. 1993, ch. 265, § 1, was eliminated completely by S.L. 2010, ch. 135, § 3.

Analysis

Application.

Where post-conviction petitioner's judgment of conviction was filed on October 4, 2005, and, on March 22, 2006, the district court relinquished jurisdiction over him, petitioner had one year and 42 days from march 22, 2006, in which to file his petition for relief. Weller v. State, 146 Idaho 652, 200 P.3d 1201 (Ct. App. 2008).

Burden of proof in an Idaho Crim. R. 41(e) proceeding seeking the return of property does not shift to the state until the time for filing an application for post-conviction relief expires under this section. State v. Meier, 149 Idaho 229, 233 P.3d 160 (Ct. App. 2010).

After defendant's probation officer and loss prevention specialists found several items of stolen merchandise in his apartment, defendant argeed to plead guilty to possession of a sexually exploitative material and the state agreed not to file any theft charges. Within the time defendant could have filed an application for post-conviction relief under this section, he filed a Idaho Crim. R. 41(e) motion to have the property seized by the state returned to him but provided only conclusory testimony that he was entitled to lawful possession. Defendant failed to meet his burden of proving his entitlement to the seized items. State v. Meier, 149 Idaho 229, 233 P.3d 160 (Ct. App. 2010).

Hairs on a murder victim's clothing and scrapings from her fingernails that DNA testing showed did not come from the convicted inmate did not mean the inmate was entitled to relief because there was no evidence that the hairs or the material scraped from the victim's fingernails necessarily came from her attacker. Fields v. State, 151 Idaho 18, 253 P.3d 692 (2011).

—Limitation Periods.

In Idaho, equitable tolling of the statute of limitations for filing a post-conviction relief application has been recognized: (1) where the applicant was incarcerated in an out-of-state facility on an in-state conviction without legal representation or access to Idaho legal materials; and (2) where mental disease and/or psychotropic medication renders an applicant incompetent and prevents the applicant from earlier pursuing challenges to his conviction. State v. Ochieng, 147 Idaho 621, 213 P.3d 406 (Ct. App. 2009).

In a murder and robbery case, the district court's dismissal of the petitioner's request for post-conviction relief was proper as his prosecutorial misconduct claims were unsupported by the facts presented and his alternative grounds were time-barred under this section. Rhoades v. State, 148 Idaho 247, 220 P.3d 1066 (2009).

Construction.

"In light of," as used in subsection (f), does not mean "together with all other admissible evidence"; it is simply a realization that test results by themselves will never show that a petitioner is not the person who committed the offense. It is the fingerprint or DNA test results that must demonstrate that the petitioner is not the person who committed the offense. Fields v. State, 151 Idaho 18, 253 P.3d 692 (2011).

Request for Counsel.

Any time a district court dismisses a petition for post-conviction relief on either substantive or procedural grounds without first addressing the petitioner's request for post-conviction counsel (assuming the petitioner made such a request), the court commits an

abuse of discretion. Hust v. State, 147 Idaho 682, 214 P.3d 668 (Ct. App. 2009).

Timely Application.

Defendant's appeal of denial of his petition for post-conviction relief was timely and presented a genuine issue of material fact regarding counsel's handling of the transcript issue for his guilty plea; defendant claimed that trial counsel offered ineffective assistance in relation to the motion to withdraw his guilty plea. Hauschulz v. State, 144 Idaho 834, 172 P.3d 1109 (2007).

Dismissal of the inmate's petition for postconviction relief was appropriate because it was untimely filed. And, Because the inmate never filed an initial application within the limitation period, her application filed May 12, 2006, could not have been a successive application permitted by § 19-4908. Schwartz v. State, 145 Idaho 186, 177 P.3d 400 (Ct. App. 2008).

—Appeal.

An application for post-conviction relief initiates a proceeding that is civil in nature, and an appellate court may not apply a fundamental error analysis in order to consider an issue which was not raised or preserved in the post-conviction relief action itself. Person v. State, 147 Idaho 453, 210 P.3d 561 (Ct. App. 2009).

Tolling of Period.

The time period in which to file an application under this section can be equitably tolled in only two situations: where the petitioner is incarcerated in an out-of-state facility on an in-state conviction without legal representation or access to Idaho legal materials and where mental disease and/or psychotropic medication renders a petitioner incompetent and prevents petitioner from earlier pursuing challenges to his conviction. Person v. State, 147 Idaho 453, 210 P.3d 561 (Ct. App. 2009).

Where defendant's failure to file a timely petition for post-conviction relief, raising a claim of ineffective assistance of counsel, was not due to an extraordinary circumstance beyond his control, but to his own lack of diligence, equitable tolling of the limitation period in this section was not appropriate. Amboh v. State, 149 Idaho 650, 239 P.3d 448 (Ct. App. 2010).

Untimely Application.

Dismissal of the inmate's petition for post-conviction relief was proper where the petition was time-barred and equitable tolling did not apply. The evidence presented did not compel the conclusion that the inmate had proven that an alleged language barrier, his confinement in administrative segregation, and an allegedly inadequate prison legal resource program prevented him from timely filing his petition. Chico-Rodriguez v. State, 141 Idaho 579, 114 P.3d 137 (Ct. App. 2005).

Defendant's third petition for post-conviction relief was properly dismissed on the basis that the petition was not timely filed, because defendant's petition was untimely under the "reasonable time" standard specific to non-capital petitions. Charboneau v. State, 144 Idaho 900, 174 P.3d 870 (2007).

The failure to file a timely petition is a basis for dismissal of the petition, assuming the defendant has not shown reason why the statute of limitation should be tolled. Person v. State, 147 Idaho 453, 210 P.3d 561 (Ct. App. 2009).

Where, other than asserting that English is not his first language and that he has been incarcerated in Idaho and elsewhere because of INS proceedings, defendant has offered no cogent reasons as to why his application for post-conviction relief was filed more than eight months beyond the statutory time limit, the application should be denied. State v. Ochieng, 147 Idaho 621, 213 P.3d 406 (Ct. App. 2009).

Claim that an inmate did not discover or become aware that he could claim post-conviction relief because of his defense attorney's deficiencies did not state a basis to avoid the bar of the statute of limitation. It was apparent that the facts giving rise to his claims — the acts and omissions of his attorney — were known to the inmate many years before the post-conviction action was filed. Because the inmate presented no facts giving rise to the possibility of a claim that was not barred by limitations under this section, the trial court's failure to consider the inmate's request for counsel and to apply the proper standard in ruling upon that request before summarily dismissing the petition was harmless error. Judd v. State, 148 Idaho 22, 218 P.3d 1 (Ct. App. 2009).

Judgment denying an defendant's petition for post-conviction relief was affirmed, because the petition was filed more than one year from the date the remittitur was issued on the defendant's criminal appeal and, thus, it was time-barred under this section. Furthermore, the defendant failed to show that his failure to file a timely petition was due to any inability to do so, and, thus, he did not demonstrate a basis for equitable tolling. Leer v. State, 148 Idaho 112, 218 P.3d 1173 (Ct. App. 2009).

Petition for postconviction relief on a claim of ineffective assistance of counsel was facially barred by this section, as the petitioner filed the petition approximately seven years after the court of appeals affirmed his conviction and sentence. Vavold v. State, 148 Idaho 44, 218 P.3d 388 (2009).

An untimely notice of appeal in a criminal case cannot postpone the commencement of

the limitation period for post-conviction actions, because the time-barred notice of appeal does not confer jurisdiction on the appellate court. Thus, there is no valid appeal for the appellate court to "determine" that could extend the post-conviction statute of limitation under this section. Schultz v. State, 151 Idaho 383, 256 P.3d 791 (Ct. App. 2011).

That defendant chose not to file his post-conviction petitions earlier, because he was under the mistaken belief that the law allowed him more time to file, does not equate, as defendant contends, to a deprivation of any reasonable opportunity to do so. Schultz v. State, 151 Idaho 383, 256 P.3d 791 (Ct. App. 2011).

A.L.R. Validity, construction, and application of state statutes and rules governing requests for post-conviction DNA testing. 72 A.L.R.6th 227.

19-4903. Application — Contents.

Cited in: Bagshaw v. State, 142 Idaho 34, 121 P.3d 965 (Ct. App. 2005); Murphy v. State, 143 Idaho 139, 139 P.3d 741 (Ct. App. 2006); Murillo v. State, 144 Idaho 449, 163 P.3d 238 (Ct. App. 2007); Stuart v. State, 145 Idaho 467, 180 P.3d 506 (Ct. App. 2007); Barcella v. State, 148 Idaho 469, 224 P.3d 536 (Ct. App. 2009); State v. Shackelford, 150 Idaho 355, 247 P.3d 582 (2010); Hoffman v. State, — Idaho —, 277 P.3d 1050 (Ct. App. 2012); Schultz v. State, — Idaho —, 291 P.3d 474 (Ct. App. 2012).

Analysis

Sufficiency of application.
Summary dismissal.

Sufficiency of Application.

An application for post-conviction relief must be verified with respect to facts within the personal knowledge of the applicant, and affidavits, records or other evidence supporting its allegations must be attached, or the application must state why such supporting evidence is not included with the petition. Hassett v. State, 127 Idaho 313, 900 P.2d 221 (Ct. App. 1995); Buss v. State, 147 Idaho 514, 211 P.3d 123 (Ct. App. 2009).

The application for post-conviction relief must present or be accompanied by admissible evidence supporting its allegations, or the application will be subject to dismissal. Medrano v. State, 127 Idaho 639, 903 P.2d 1336 (Ct. App. 1995); Follinus v. State, 127 Idaho 897, 908 P.2d 590 (Ct. App. 1995); Fenstermaker v. State, 128 Idaho 285, 912 P.2d 653 (Ct. App. 1995); State v. Payne, 146 Idaho 548, 199 P.3d 123 (2008); Buss v. State, 147 Idaho 514, 211 P.3d 123 (Ct. App. 2009).

Summary Dismissal.

Defendant's petition for post-conviction relief was properly summarily dismissed by the district court, because he failed to make a prima facie determination that he would have insisted on going to trial instead of pleading guilty had the sheriff's incident report not been withheld; defendant did not demonstrate a genuine issue of material fact that the proceeding would have been different. Roeder v. State, 144 Idaho 415, 162 P.3d 794 (Ct. App. 2007).

Summary dismissal of defendant's application for post-conviction relief based on ineffective assistance of counsel was proper, as the defendant failed to support his argument that counsel should have subpoenaed an expert witness to contradict the state's DNA evidence with any substantive evidence regarding the testimony such an expert would have provided. Self v. State, 145 Idaho 578, 181 P.3d 504 (Ct. App. 2007).

Where appellant did not present an expert's opinion or any admissible evidence to show that he was not competent at the time he pled guilty, he did not demonstrate the existence of a genuine issue of material fact supporting his claim that his attorney was ineffective for failing to request a competency evaluation; because appellant did not comply with this section, the district court did not err by summarily dismissing his petition for post-conviction relief under § 19-4906. Ridgley v. State, 148 Idaho 671, 227 P.3d 925 (2010).

19-4904. Inability to pay costs.

Cited in: Murphy v. State, 143 Idaho 139, 139 P.3d 741 (Ct. App. 2006); Eby v. State, 148 Idaho 731, 228 P.3d 998 (2010).

Analysis

Discretion of court.
Request for attorney.
Right to counsel.
Timing of appointment.

Discretion of Court.

The decision to grant or deny a request for court-appointed counsel lies within the discretion of the district court. State v. Ochieng, 147 Idaho 621, 213 P.3d 406 (Ct. App. 2009).

Request for Attorney.

Trial court erred in summarily dismissing pro se inmate's application for post-conviction relief without first giving notice of perceived

deficiencies in the pleading and appointing counsel to assist the inmate in developing the claims to present a viable basis for relief. Newman v. State, 140 Idaho 491, 95 P.3d 642 (Ct. App. 2004).

District court did not err in denying defendant's request for post-conviction counsel, where the district court's thorough review of defendant's allegations supported the finding that defendant's claims were frivolous and required no further investigation; defendant raised no allegations sufficient to require the appointment of counsel. Workman v. State, 144 Idaho 518, 164 P.3d 798 (2007).

If an applicant alleges facts that raise the possibility of a valid claim, the district court should appoint counsel in order to give the applicant an opportunity to work with counsel and properly allege the necessary supporting facts. State v. Ochieng, 147 Idaho 621, 213 P.3d 406 (Ct. App. 2009).

While the decision to grant or deny a request for court-appointed counsel is discretionary, counsel should be appointed if the petitioner qualifies financially and alleges facts to raise the possibility of a valid claim. If facts are alleged giving rise to the possibility of a valid claim, the trial court should appoint counsel in order to give the petitioner an opportunity to work with counsel and properly allege the necessary supporting facts. Every inference must run in the petitioner's favor where the petitioner is unrepresented at that time and cannot be expected to know how to properly allege the necessary facts. Only if all of the claims alleged in the petition are frivolous may the court deny a request for counsel. If the court decides that the claims in the petition are frivolous, it should provide sufficient notice regarding the basis for its ruling to enable the petitioner to provide additional facts, if they exist, to demonstrate the existence of a non-frivolous claim. Judd v. State, 148 Idaho 22, 218 P.3d 1 (Ct. App. 2009).

A district court presented with a request for appointed counsel in a post-conviction action must address that request before ruling on the substantive issues in the case and errs if it denies a petition on the merits before ruling on the applicant's request for counsel. Judd v. State, 148 Idaho 22, 218 P.3d 1 (Ct. App. 2009).

While a trial court erred in not specifically addressing defendant's motion for the appointment of counsel before it addressed the substantive merits of defendant's successive post-conviction petition, the error did not affect defendant's substantive rights as the petition did not raise the possibility of a valid claim. Melton v. State, 148 Idaho 339, 223 P.3d 281 (2009).

In determining whether to appoint counsel pursuant to this section, the district court should determine whether the applicant is able to afford counsel and whether the situation is one in which counsel should be appointed to assist the applicant. Facts sufficient to state a claim may not be alleged because they do not exist or because the pro se applicant does not know the essential elements of a claim. Some claims are so patently frivolous that they could not be developed into viable claims even with the assistance of counsel. Gonzales v. State, 151 Idaho 168, 254 P.3d 69 (Ct. App. 2011).

Right to Counsel.

Court erred by dismissing a post-conviction motion and denying petitioner the appointment of counsel because, in deciding whether his pro se petition raised the possibility of a valid claim, the court should have considered whether the facts alleged were such that a reasonable person would be willing to retain counsel to conduct a further investigation into the claims; the district court failed to do that. Swader v. State, 143 Idaho 651, 152 P.3d 12 (2007).

Due process under the United States or Idaho Constitutions was not violated by the denial of a motion to replace substitute counsel; under the three-prong test, defendant had no constitutional right to counsel in such a proceeding, his presence was not necessary since the grounds were presented in a written motion, and the state had an interest in completing the case since this was the second motion. Rios-Lopez v. State, 144 Idaho 340, 160 P.3d 1275 (Ct. App. 2007).

Timing of Appointment.

The district court abuses its discretion where it fails to determine whether an applicant for post-conviction relief is entitled to court-appointed counsel before denying the application on the merits. State v. Ochieng, 147 Idaho 621, 213 P.3d 406 (Ct. App. 2009).

19-4906. Pleadings and judgment on pleadings.

Cited in: Murillo v. State, 144 Idaho 449, 163 P.3d 238 (Ct. App. 2007); Sheahan v. State, 146 Idaho 101, 190 P.3d 920 (Ct. App. 2008).

ANALYSIS

Appealable orders.
Burden of proof.

Appealable Orders.

Where a district court dismissed some of defendant's individual claims in a post-conviction proceeding, but did not indicate that the application process was to start over or that the order was intended as a final judgment, the district court's order was a partial judgment, and it was not appealable at that time; therefore, defendant's timely appeal from the final dismissal of the application properly included issues arising from a notice of intent to dismiss the original application and a ruling on defendant's reply or lack thereof. Crabtree v. State, 144 Idaho 489, 163 P.3d 1201 (Ct. App. 2006).

Post-conviction petitioner's notice of appeal from a district court's notice of intent to dismiss, though premature and interlocutory in nature, was nevertheless sufficient to effectuate an appeal from a final order dismissing the petition four days after the petitioner's notice of appeal was filed. Weller v. State, 146 Idaho 652, 200 P.3d 1201 (Ct. App. 2008).

Burden of Proof.

To prevail on an ineffective assistance of counsel claim, the defendant must show the attorney's performance was deficient and that the defendant was prejudiced by the deficiency. To establish a deficiency, the petitioner has the burden of showing that the attorney's representation fell below an objective standard of competence demanded of attorneys in criminal cases. Hoffman v. State, — Idaho —, 277 P.3d 1050 (Ct. App. 2012).

Denial of Competent Counsel.

Applicant did not raise a genuine issue of material fact as to whether trial counsel's performance was deficient regarding the victim's relationship with the defendant and his criminal activities; applicant also failed to show how he was prejudiced by counsel's failure to interview and call impeachment witnesses on the victim's reputation for truthfulness. Bagshaw v. State, 142 Idaho 34, 121 P.3d 965 (Ct. App. 2005).

Dismissal.

District court was allowed on its own initiative to dismiss a petition for post-conviction relief based on untimeliness; however, the district court erred in dismissing defendant's petition because there was an issue of material fact as to the timeliness of the petition; the case was remanded to the district court to hold a hearing on the issue of timeliness. Kirkland v. State, 143 Idaho 544, 149 P.3d 819 (2006), overruled on other grounds, Verska v. St. Alphonsus Med. Ctr., 151 Idaho 889, 265 P.3d 502 (2011).

Applicant's petition for post-conviction relief was improperly dismissed where the district court improperly analyzed the applicant's claim that counsel precluded the applicant from testifying as alleging ineffective assistance rather than as alleging the denial of the applicant's constitutional right to testify in his own behalf. DeRushe v. State, 146 Idaho 599, 200 P.3d 1148 (2009).

Where the state has filed a motion for summary disposition, but the court dismisses the application on grounds different from those asserted in the state's motion, the court does so on its own initiative and the court must provide the defendant twenty-day notice to reply. Buss v. State, 147 Idaho 514, 211 P.3d 123 (Ct. App. 2009).

If the district court summarily dismisses a claim without reliance on any ground contained in the state's motion to dismiss, the dismissal will be treated as a sua sponte dismissal and requires a twenty-day notice to the defendant for a reply. Buss v. State, 147 Idaho 514, 211 P.3d 123 (Ct. App. 2009).

Application for post-conviction relief was properly dismissed because defendant's counsel was not ineffective for failing to argue that § 18-3316 was unconstitutional as a bill of attainder and as an ex post facto law. Counsel was not required to raise a nonmeritorious issue in the district court. Zivkovic v. State, 150 Idaho 783, 251 P.3d 611 (Ct. App.), cert. denied, — U.S. —, 132 S. Ct. 555, 181 L. Ed. 2d 401 (2011).

—Notice of Intent to Dismiss.

Trial court's notice of intent dismiss defendant's petition for post-conviction relief erroneously overlooked the possibility that ineffective assistance constituted sufficient reason under § 19-4908 for defendant to represent the claims that were inadequately presented in his first case, or decided without explanation that there was not sufficient evidence of ineffective assistance; either way, the appellate court found that the trial court did not give adequate notice of specific deficiencies in defendant's evidence or legal analysis, and thus did not properly state the grounds for dismissal. Griffin v. State, 142 Idaho 438, 128 P.3d 975 (Ct. App. 2006).

District court is free to adopt into a notice of intent to dismiss the arguments set forth by the state's answer to an application for post-

conviction relief or motion for summary dismissal of the same; however, the district court must do so explicitly within the context of the notice of intent to dismiss, and a verbatim reproduction of the state's arguments in the notice would be best. At a minimum, a district court must include in the notice an unambiguous statement that the district court is adopting said arguments and instructs the applicant to refer to the state's answer or motion to dismiss. Crabtree v. State, 144 Idaho 489, 163 P.3d 1201 (Ct. App. 2006).

Dismissal of an application for post-conviction relief was inappropriate because notice provided defendant was too broad and general to give adequate notice of the grounds for dismissal. Defendant's attempt to respond to the deficient motion to dismiss did not absolve the district court of its duty. Franck-Teel v. State, 143 Idaho 664, 152 P.3d 25 (Ct. App. 2006).

Where a district court's notice of intent to dismiss did not address defendant's claims, only set forth the general legal analysis for an ineffective assistance claim, did not address how the arguments in the application failed to support the claim, made a brief mention of the state's motion, and the entire analysis was contained in one sentence, it was insufficient to allow defendant a meaningful opportunity to respond. Crabtree v. State, 144 Idaho 489, 163 P.3d 1201 (Ct. App. 2006).

State's answer and motion to dismiss defendant's petition for post-conviction relief clearly put defendant on notice of the basis for the state's request that the petition be summarily dismissed, and no advance notice by the district court was required before it summarily dismissed defendant's petition for post-conviction relief. Workman v. State, 144 Idaho 518, 164 P.3d 798 (2007).

—Proper.

Inmate's petition for post-conviction relief on the basis of ineffective assistance of counsel was properly denied. Inmate failed to show that counsel's failure to contest the district court's appointment of a psychologist to determine the inmate's competency was prejudicial, since he was also examined by a neuropsychologist at his own request, who concurred in the psychologist's opinion that he was competent. Hayes v. State, 143 Idaho 88, 137 P.3d 475 (Ct. App. 2006).

—Time-barred.

Claim that an inmate did not discover or become aware that he could claim post-conviction relief because of his defense attorney's deficiencies did not state a basis to avoid the bar of the statute of limitation. It was apparent that the facts giving rise to his claims — the acts and omissions of his attorney — were known to the inmate many years before the post-conviction action was filed. Because the inmate presented no facts giving rise to the possibility of a claim that was not barred by limitations under § 19-4902, the trial court's failure to consider the inmate's request for counsel and to apply the proper standard in ruling upon that request before summarily dismissing the petition was harmless error. Judd v. State, 148 Idaho 22, 218 P.3d 1 (Ct. App. 2009).

Ineffective Assistance of Counsel.

Application for post-conviction relief was properly dismissed; applying the *Strickland* standard to a conflict of interest case involving serial representation, the applicant had not shown a denial of effective assistance of counsel, because he failed to demonstrate that the conflict of interest adversely affected the outcome of his trial, he did not identify any witnesses who were not called to testify at trial and did not provide examples of his counsel's deficiency during cross-examination of the state's witnesses, and he had not demonstrated how fingerprinting a weapon would have resulted in a reasonable probability of a different outcome. Sparks v. State, 140 Idaho 292, 92 P.3d 542 (Ct. App. 2004).

District court erred in summarily dismissing defendant's claim for post-conviction relief, because trial counsel rendered deficient service when he failed to ask for a continuance to consult with a pathologist after it became clear on the day of trial that the State's expert would change his manner-of-death opinion from indeterminate to homicide. Murphy v. State, 143 Idaho 139, 139 P.3d 741 (Ct. App. 2006).

Post-conviction court erred in summarily dismissing appellant's claim that counsel was ineffective in probation revocation proceedings for failing to challenge the terms of appellant's probation and failed to present mitigating evidence. Counsel's failure to present testimony from appellant's grandmother that would have contradicted the probation officer's testimony and counsel's failure to present evidence of appellant's untreated mental health problem raised a material question regarding the vigor and competence of his counsel's representation. Knutsen v. State, 144 Idaho 433, 163 P.3d 222 (Ct. App. 2007).

Petitioner's routine presentence interview was not a critical stage of the adversarial proceedings during which he had a right to counsel, under the Sixth Amendment to the United States Constitution and petitioner's counsel could not have provided ineffective assistance by failing to advise petitioner prior to or during the interview and in failing to help him fill out the presentence questionnaire. Stuart v. State, 145 Idaho 467, 180 P.3d 506 (Ct. App. 2007).

Petitioner was entitled to a hearing on his motion for post-conviction relief to present evidence in support of his allegation that counsel was ineffective for failing to move to suppress evidence because there was an issue of material fact as to whether the seized drugs were in plain view, or were in a jacket pocket. Thus, there was a material issue of fact as to whether petitioner's trial counsel was deficient, and as to whether that deficiency prejudiced petitioner. Baldwin v. State, 145 Idaho 148, 177 P.3d 362 (2008).

Petition for post-conviction relief was properly dismissed because petitioner, who claimed ineffective assistance of counsel, did not provided more than a scintilla of evidence to support his underlying claim that a court intepreter inadequately interpreted guilty plea proceedings. Nevarez v. State, 145 Idaho 878, 187 P.3d 1253 (Ct. App. 2008).

To prevail on a claim of ineffective assistance of counsel, the applicant for post-conviction relief must demonstrate (1) counsel's performance fell below an objective standard of reasonableness, and (2) there is a reasonable probability that, but for counsel's errors, the result would have been different. State v. Payne, 146 Idaho 548, 199 P.3d 123 (2008).

A district court presented with a request for appointed counsel in a post-conviction action must address that request before ruling on the substantive issues in the case and errs if it denies a petition on the merits before ruling on the applicant's request for counsel. Judd v. State, 148 Idaho 22, 218 P.3d 1 (Ct. App. 2009).

Defendant failed to meet his burden of showing that his counsel provided ineffective assistance by failing to be present at the psychosexual evaluation (PSE), failing to move to suppress the PSE, failing to ensure that defendant was read his *Miranda* rights prior to the presentence investigation report, and failing to secure an independent psychiatric evaluation; defendant failed to meet his burden of showing prejudice resulting from his counsel's ineffective assistance in failing to advise him of his rights prior to the PSE, and the district court's order summarily dismissing defendant's application of post-conviction relief was affirmed. Hughes v. State, 148 Idaho 448, 224 P.3d 515 (Ct. App. 2009).

Defendant was entitled to an evidentiary hearing on his application for post-conviction relief where trial counsel was ineffective by failing to object to a jury instruction that omitted an element of the crime of vehicular manslaughter, in failing to instruct the jury that the state had the burden to prove that defendant's intoxication was a significant cause of the victim's death. Because the omitted element changed the state's burden of proof, there was a reasonable probability that, but for counsel's deficient performance, there would have been a different outcome. McKay v. State, 148 Idaho 567, 225 P.3d 700 (2010).

Where appellant did not present an expert's opinion or any admissible evidence to show that he was not competent at the time he pled guilty, he did not demonstrate the existence of a genuine issue of material fact supporting his claim that his attorney was ineffective for failing to request a competency evaluation. Ridgley v. State, 148 Idaho 671, 227 P.3d 925 (2010).

To prevail on an ineffective assistance of counsel claim, the petitioner must show that his defense attorney's performance was deficient, and ordinarily the petitioner must also show that the defendant was prejudiced by the deficiency. To establish prejudice, the petitioner must show a reasonable probability that, but for the attorney's deficient performance, the outcome of the trial would have been different. Zepeda v. State, 152 Idaho 710, 274 P.3d 11 (Ct. App. 2012).

While prejudice from ineffective assistance may be presumed when defense counsel fails to file a notice of appeal after the defendant so requests, that presumption does not apply to a defense attorney's failure to file a motion to withdraw a guilty plea. Zepeda v. State, 152 Idaho 710, 274 P.3d 11 (Ct. App. 2012).

Claim for post-conviction relief was properly summarily dismissed under this section; petitioner's ineffective assistance of counsel claim relating to a "plea agreement" discussed at his juvenile waiver hearing was barred by res judicata because it had already been decided on direct appeal that there was no enforceable "plea agreement" at the time of the juvenile waiver hearing, and petitioner could not establish prejudice in his ineffective assistance claim based upon his attorney's alleged failure to inform him of his right against self-incrimination prior to his participation in a presentencing psychosexual evaluation (PSE) because he failed to make the PSE and sentencing hearing transcript part of the record on appeal. Schultz v. State, — Idaho —, 291 P.3d 474 (Ct. App. 2012).

Notice.

Where a trial court dismisses a claim based upon grounds other than those offered — by the state's motion for summary dismissal and accompanying memoranda — the defendant seeking post-conviction relief must be provided with a 20-day notice period. Kelly v. State, 149 Idaho 517, 236 P.3d 1277 (2010).

Owner.

—Dismissal.

If the state's motion to dismiss fails to give notice of the grounds for dismissal, the court may grant summary dismissal only if the court first gives the applicant the requisite

twenty-day notice of intent to dismiss and the grounds for such dismissal. Buss v. State, 147 Idaho 514, 211 P.3d 123 (Ct. App. 2009).

Post-Conviction Relief.

Summary dismissal of defendant's application for post-conviction relief based on ineffective assistance of counsel was proper, as the defendant failed to support his argument that counsel should have subpoenaed an expert witness to contradict the state's DNA evidence with any substantive evidence regarding the testimony such an expert would have provided. Self v. State, 145 Idaho 578, 181 P.3d 504 (Ct. App. 2007).

Defendant's third petition for post-conviction relief was properly dismissed on the basis that the petition was not timely filed, because defendant's petition was untimely under the "reasonable time" standard specific to non-capital petitions. Charboneau v. State, 144 Idaho 900, 174 P.3d 870 (2007).

Review.

Inmate was entitled to an evidentiary hearing under on his claim that his counsel did not inform him that upon conviction he could be required to pay restitution, because a transcript confirmed that he was not informed on the record at the plea hearing that his guilty plea could result in an order of restitution and the inmate asserted that he was not so informed at any other time before his plea. Hayes v. State, 143 Idaho 88, 137 P.3d 475 (Ct. App. 2006).

An appellant may not challenge the sufficiency of the notice contained in the state's motion for summary disposition of a petition for post-conviction relief for the first time on appeal. Kelly v. State, 149 Idaho 517, 236 P.3d 1277 (2010).

Statute of Limitations.

While the statute of limitations can be raised as an affirmative defense by the state pursuant to subsection (b), it can also be raised sua sponte by the court. Therefore, the district court acted properly when it sua sponte raised the statute of limitations in regard to defendant's application for post-conviction relief. State v. Ochieng, 147 Idaho 621, 213 P.3d 406 (Ct. App. 2009).

Summary Disposition.

District court did not err in summarily dismissing an inmate's petition for post-conviction relief; the petition filed more than two years after his conviction was barred by the statute of limitations. Sayas v. State, 139 Idaho 957, 88 P.3d 776 (Ct. App. 2003).

Order for summary disposition of a post-conviction relief application under subsection (c) is the procedural equivalent of summary judgment under I.R.C.P. 56. Newman v. State, 140 Idaho 491, 95 P.3d 642 (Ct. App. 2004).

Summary dismissal of a post-conviction application is appropriate only if there exists no genuine issue of material fact which, if resolved in the applicant's favor, would entitle him to the requested relief, and if a genuine issue is presented, an evidentiary hearing must be conducted. Newman v. State, 140 Idaho 491, 95 P.3d 642 (Ct. App. 2004).

District court erred in summarily dismissing a petitioner's application for post-conviction relief following a guilty plea where he had sufficiently averred that his counsel failed to inform of the intent element, and that he would not have pled guilty and would have gone to trial but for the alleged error. Martinez v. State, 143 Idaho 789, 152 P.3d 1237 (Ct. App. 2007).

Post-conviction court erred in summarily dismissing appellant's claim that a neuropsychological evaluation required vacation of his sentence for lewd conduct. Information on appellant's bi-polar disorder would have been relevant to appellant's probation revocation proceedings, because the district court might have authorized treatment for the condition while he was on probation. Knutsen v. State, 144 Idaho 433, 163 P.3d 222 (Ct. App. 2007).

Defendant's petition for post-conviction relief was properly summarily dismissed by the district court, because he failed to make a prima facie determination that he would have insisted on going to trial instead of pleading guilty had the sheriff's incident report not been withheld; defendant did not demonstrate a genuine issue of material fact that the proceeding would have been different. Roeder v. State, 144 Idaho 415, 162 P.3d 794 (Ct. App. 2007).

Summary dismissal of inmate's petition for post-conviction relief on the basis of ineffective counsel was improper. Inmate has been convicted of manufacturing methamphetamine in a rented shed which had been searched pursuant to consent by property resident. Defense counsel's failure to challenge search was prejudicial. Lint v. State, 145 Idaho 472, 180 P.3d 511 (Ct. App. 2008).

Summary dismissal is permissible when the applicant's evidence has raised no genuine issue of material fact that, if resolved in the applicant's favor, would entitle the applicant to the requested relief. Barcella v. State, 148 Idaho 469, 224 P.3d 536 (Ct. App. 2009).

A claim for post-conviction relief will be subject to summary dismissal if the applicant has not presented evidence making a prima facie case as to each essential element of the claims upon which the applicant bears the burden of proof. Thus, summary dismissal is permissible when the applicant's evidence has raised no genuine issue of material fact that, if resolved in the applicant's favor, would entitle the applicant to the requested relief.

Wolf v. State, 152 Idaho 64, 266 P.3d 1169 (Ct. App. 2011).

In post-conviction actions, the district court, as the trier of fact, is not constrained to draw inferences in favor of the party opposing the motion for summary disposition; rather the district court is free to arrive at the most probable inferences to be drawn from uncontroverted evidence. Wolf v. State, 152 Idaho 64, 266 P.3d 1169 (Ct. App. 2011).

—Review.

On review, the appellate court will liberally construe any inferences in favor of the non-moving party and determine, based on the pleadings, depositions, admissions and affidavits, whether a genuine issue of material fact exists. Dunlap v. State, 146 Idaho 197, 192 P.3d 1021 (2008).

When an action is to be tried before the court without a jury, the judge is not constrained to draw inferences in favor of the party opposing a motion, but, rather, the trial judge is free to arrive at the most probable inferences to be drawn from uncontroverted evidentiary facts. State v. Payne, 146 Idaho 548, 199 P.3d 123 (2008).

19-4907. Hearing — Evidence — Order — Presence of applicant.

Cited in: Sparks v. State, 140 Idaho 292, 92 P.3d 542 (Ct. App. 2004); Murphy v. State, 143 Idaho 139, 139 P.3d 741 (Ct. App. 2006); Suits v. State, 143 Idaho 160, 139 P.3d 762 (Ct. App. 2006); Murillo v. State, 144 Idaho 449, 163 P.3d 238 (Ct. App. 2007); Roeder v. State, 144 Idaho 415, 162 P.3d 794 (Ct. App. 2007); Stuart v. State, 145 Idaho 467, 180 P.3d 506 (Ct. App. 2007); Thomas v. State, 145 Idaho 765, 185 P.3d 921 (Ct. App. 2008); Queen v. State, 146 Idaho 502, 198 P.3d 731 (Ct. App. 2008); Barcella v. State, 148 Idaho 469, 224 P.3d 536 (Ct. App. 2009); Hoffman v. State, — Idaho —, 277 P.3d 1050 (Ct. App. 2012).

Analysis

Assistance of counsel.
Burden of proof.
In general.
Relief denied.
Sufficiency of motion to dismiss.

Assistance of Counsel.

Petitioner, whose probation order was found to be void because the district court had lost jurisdiction due to expiration of a 180-day retained jurisdiction period, failed to show that his counsel's performance was deficient, because there was no evidence that counsel could have speeded up the process of obtaining a psychosexual profile that the district court was waiting for when it lost jurisdiction. Taylor v. State, 145 Idaho 866, 187 P.3d 1241 (Ct. App. 2008).

Defendant's application for post-conviction relief did not raise the possibility of a valid claim of ineffective assistance of counsel based on counsel's failure to advise against defendant's participation in the court-ordered psychosexual evaluation or failure to arrange an independent psychosexual evaluation; his claims of ineffective assistance of counsel did not raise a genuine issue of material fact as to whether he was entitled to post-conviction relief. Gonzales v. State, 151 Idaho 168, 254 P.3d 69 (Ct. App. 2011).

To prevail on an ineffective assistance of counsel claim, the defendant must show that the attorney's performance was deficient and that the defendant was prejudiced by the deficiency. To establish a deficiency, the applicant has the burden of showing that the attorney's representation fell below an objective standard of reasonableness. Where the defendant was convicted upon a guilty plea, to satisfy the prejudice element, the claimant must show that there is a reasonable probability that, but for counsel's errors, he would not have pled guilty and would have insisted on going to trial. Bradley v. State, 151 Idaho 629, 262 P.3d 272 (Ct. App. 2011).

Trial court did not err in dismissing defendant's motion for postconviction relief, because counsel was not ineffective for failing to file a motion to suppress; the information in an affidavit from an officer who conducted the undercover operation was sufficient to provide probable cause for the issuance of a warrant. Wolf v. State, 152 Idaho 64, 266 P.3d 1169 (Ct. App. 2011).

Burden of Proof.

An applicant for post-conviction relief has the burden of proving, by a preponderance of the evidence, the allegations on which his petition is based. Holmes v. State, 104 Idaho 312, 658 P.2d 983 (Ct. App. 1983); Buss v. State, 147 Idaho 514, 211 P.3d 123 (Ct. App. 2009).

Denial of the inmate's petition for postconviction relief was appropriate because he failed to establish that there existed admissible medical evidence of his alleged consistent impotence. Therefore, he failed to show that his counsel rendered deficient performance in not presenting the evidence in question. Curless v. State, 146 Idaho 95, 190 P.3d 914 (Ct. App. 2008).

In General.

For purposes of determining whether due process requires that a defendant be informed of particular consequences of a plea in order

to make an informed decision on whether to plead guilty, and for purposes of determining whether counsel's failure to advise a client on the particular consequences of a plea other than deportation constitutes ineffective assistance of counsel, the appropriate inquiry continues to be whether the particular consequences are direct or collateral. A consequence is direct if it presents a definite, immediate and largely automatic effect on the defendant's range of punishment. Factors to be considered include; the defendant's power to prevent the consequence, the punitive or remedial nature of the consequence, and the amount of control the sentencing judge has over imposing the consequence. Steele v. State, — Idaho —, 291 P.3d 466 (Ct. App. 2012).

Relief Denied.

Denial of the inmate's petition for post-conviction relief was proper pursuant to this section where he declined to present any evidence that his counsel ignored his request to file a direct appeal. The adoption of the inmate's position that his verified application and affidavits were automatically introduced into evidence at the evidentiary hearing would have deprived the parties of the opportunity to object to the admissibility of any such proof. Loveland v. State, 141 Idaho 933, 120 P.3d 751 (Ct. App. 2005).

Where officers obtained an inmate's DNA from a water bottle in an interrogation room, the inmate was not entitled to post-conviction relief, because, inter alia, counsel was not ineffective for failing to move for suppression under the Fourth Amendment since (1) a motion to suppress would not have been successful because the inmate had no reasonable expectation of privacy in the water bottle, and (2) regarding the inmate's expectation of privacy in genetic identity, it was not deficient performance of counsel to fail to argue for a novel theory in an undeveloped area of law. Piro v. State, 146 Idaho 86, 190 P.3d 905 (Ct. App. 2008).

Where an inmate alleged that trial attorney failed to communicate and failed to communicate a plea offer, the inmate was not entitled to post-conviction relief, because there was evidence that the inmate's attorney met with the inmate on multiple occasions and the inmate's testimony regarding an alleged plea offer was not credible. Piro v. State, 146 Idaho 86, 190 P.3d 905 (Ct. App. 2008).

Defendant's motion for post-conviction relief following his convictions of lewd conduct with a minor under 16 years of age and sexual abuse of a child for inappropriate sexual contact with his daughter was properly denied because, even if defendant's right to testify was violated, the error was harmless. Testifying would have exposed defendant to cross-examination about the thousands of pornographic images and incest stories on his computer; as such, even if defendant had testified, the court was convinced beyond a reasonable doubt that the jury would still have found defendant guilty. Rossignol v. State, 152 Idaho 700, 274 P.3d 1 (Ct. App. 2012).

Sufficiency of Motion to Dismiss.

A petition for post-conviction relief differs from a complaint in an ordinary civil action, in that it must contain more than a short and plain statement of the claim that would suffice for a complaint under I.R.C.P. 8(a)(1). The petition must be verified with respect to facts within the personal knowledge of the petitioner, and affidavits, records or other evidence supporting its allegations must be attached, or the petition must state why such supporting evidence is not included. In other words, the petition must present or be accompanied by admissible evidence supporting its allegations, or it will be subject to dismissal. Schultz v. State, — Idaho —, 291 P.3d 474 (Ct. App. 2012).

19-4908. Waiver of or failure to assert claims.

Cited in: Dunlap v. State, 146 Idaho 197, 192 P.3d 1021 (2008).

ANALYSIS

Ineffective assistance of counsel.
Matters not included in application.
Successive petitions.
Sufficient reason.
Timeliness.

Ineffective Assistance of Counsel.

A claim of ineffective assistance of counsel, in representing a petitioner in an initial application for post-conviction relief may not be raised as an issue in a subsequent or successive application for such relief. Wolfe v. State, 113 Idaho 337, 743 P.2d 990 (Ct. App. 1987); Nelson v. Blades, 2009 U.S. Dist. LEXIS 24645 (D. Idaho Mar. 23, 2009).

Matters Not Included in Application.

Parties did not expressly or impliedly consent to trying a new and unpled assertion that counsel was ineffective with regard to an effort to withdraw the post-conviction petitioner's guilty plea because he did not indicate that he wished to amend the pleadings or move to alter or amend the judgment.

Monahan v. State, 145 Idaho 872, 187 P.3d 1247 (Ct. App. 2008).

Successive Petitions.

Dismissal of the inmate's petition for postconviction relief was appropriate because it was untimely filed, and, because the inmate never filed an initial application within the limitation period, her application filed May 12, 2006 could not have been a successive application permitted by this section. Schwartz v. State, 145 Idaho 186, 177 P.3d 400 (Ct. App. 2008).

Sufficient Reason.

Trial court's notice of intent dismiss defendant's petition for post-conviction relief erroneously overlooked the possibility that ineffective assistance constituted sufficient reason under this section for defendant to represent the claims that were inadequately presented in his first case, or decided without explanation that there was not sufficient evidence of ineffective assistance; either way, the appellate court found that the trial court did not give adequate notice of specific deficiencies in defendant's evidence or legal analysis, and thus did not properly state the grounds for dismissal. Griffin v. State, 142 Idaho 438, 128 P.3d 975 (Ct. App. 2006).

Timeliness.

Defendant's third petition for post-conviction relief was properly dismissed on the basis that the petition was not timely filed, because defendant's petition was untimely under the "reasonable time" standard specific to non-capital petitions. Charboneau v. State, 144 Idaho 900, 174 P.3d 870 (2007).

CHAPTER 50

INTERSTATE AGREEMENT ON DETAINERS

19-5001. Text of agreement.

Cited in: State v. Beck, 144 Idaho 651, 167 P.3d 788 (Ct. App. 2007).

Analysis

Requirements.
Strict compliance.

Requirements.

For a defendant to invoke the speedy trial provision of this agreement, three events must occur: (1) the receiving state must place a detainer on a prisoner in the sending state; (2) the prisoner must deliver to the warden or custodial official holding custody over the prisoner a written notice and request for final disposition; and (3) the warden or custodial official must promptly forward the prisoner's request and a certificate containing the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner to the appropriate prosecutor and district court in the receiving state. Failure to bring a prisoner to trial within the applicable statutory time period requires a dismissal, with prejudice, of all charges. State v. Mangum, — Idaho —, 291 P.3d 44 (Ct. App. 2012).

Strict Compliance.

This agreement requires strict compliance with its request provisions, at least where no intentional interference by state parties is shown. State v. Mangum, — Idaho —, 291 P.3d 44 (Ct. App. 2012).

A.L.R. Construction and application of Article IV of Interstate Agreement on Detainers (IAD): Issues related to "speedy trial" requirement, and construction of essential terms. 51 A.L.R.6th 1.

Construction and application of Article IV of Interstate Agreement on Detainers (IAD): Issues related to "anti-shuttling" provision, dismissal of action against detainee, and adequacy of certificate. 52 A.L.R.6th 1.

Construction and application of Article IV of Interstate Agreement on Detainers (IAD): Issues related to custody, temporary custody, contest as to legality of custody, necessity of hearing, and transmittal orders. 53 A.L.R.6th 1.

Construction and application of Article III of Interstate Agreement on Detainers (IAD) — Issues related to "speedy trial" requirement, and construction of essential terms. 70 A.L.R.6th 361.

Construction and application of Article III of Interstate Agreement on Detainers (IAD): issues related to certificate, request by defendant for disposition, and "anti-shuttling" provision. 71 A.L.R.6th 335.

Construction and application of Article III of Interstate Agreement on Detainers (IAD): Issues related to custody, duties of prison officials, waiver of extradition, escape, assistance of counsel, and necessity of hearing. 72 A.L.R.6th 141.

CHAPTER 51

PEACE OFFICER STANDARDS AND TRAINING COUNCIL

19-5101. Definitions. — As used in this act:

(a) "Council" means the Idaho peace officer standards and training council.

(b) "County detention officer" means an employee in a county jail who is responsible for the safety, care, protection, and monitoring of county jail inmates.

(c) "Law enforcement" means any and all activities pertaining to crime prevention or reduction and law enforcement, including police, courts, prosecution, corrections, probation, rehabilitation, and juvenile delinquency.

(d) "Peace officer" means any employee of a police or law enforcement agency which is a part of or administered by the state or any political subdivision thereof and whose duties include and primarily consist of the prevention and detection of crime and the enforcement of penal, traffic or highway laws of this state or any political subdivision. "Peace officer" also means an employee of a police or law enforcement agency of a federally recognized Indian tribe who has satisfactorily completed the peace officer standards and training academy and has been deputized by a sheriff of a county or a chief of police of a city of the state of Idaho.

(e) "Political subdivision" means any city or county.

History.

I.C., § 19-5101, as added by 1981, ch. 307, § 2, p. 629; am. 1992, ch. 248, § 1, p. 730; am. 1997, ch. 84, § 1, p. 199; am. 2008, ch. 88, § 3, p. 244.

Compiler's Notes. The 2008 amendment, by ch. 88, inserted "probation" in subsection (c).

Peace Officer.

Defendant's conviction and sentence, pursuant to § 18-915, for battery on a peace officer were proper because the evidence was sufficient to show that the victim, who was an inmate with defendant, was a former bailiff and peace officer as defined by § 19-5109 and this section. State v. Herrera, 152 Idaho 24, 266 P.3d 499 (Ct. App. 2011).

Opinions of Attorney General. The act creating the Peace Officer Standards and Training (POST) Council does not grant the Council the authority to certify the employees of a private entity as peace officers, because the term "peace officers" includes only a discrete group of qualified public officers. OAG 08-02.

19-5109. Powers of the council — Standards of training, education and employment of peace officers — Certification — Penalties. — (1) It shall be the duty of and the council shall have the power:

(a) To establish the requirements of minimum basic training which peace officers shall complete in order to be eligible for permanent employment as peace officers, and the time within which such basic training must be completed. One (1) component of minimum basic training shall be a course in the investigation of and collection of evidence in cases involving an allegation of sexual assault or battery.

(b) To establish the requirements of minimum education and training standards for employment as a peace officer in probationary, temporary, part-time, and/or emergency positions.

(c) To establish the length of time a peace officer may serve in a probationary, temporary, and/or emergency position.

(d) To approve, deny approval or revoke the approval of any institution or school established by the state or any political subdivision or any other party for the training of peace officers.

(e) To establish the minimum requirements of courses of study, attendance, equipment, facilities of all approved schools, and the scholastic requirement, experience and training of instructors at all approved schools.

(f) To establish such other requirements for employment, retention and promotion of peace officers, including minimum age, physical and mental standards, citizenship, moral character, experience and such other matters as relate to the competence and reliability of peace officers.

(g) To certify peace officers as having completed all requirements established by the council in order to be eligible for permanent employment as peace officers in this state.

(h) To receive and file for record copies of merit regulations or local ordinances passed by any political subdivision.

(i) To maintain permanent files and transcripts for all peace officers certified by the council to include any additional courses or advanced courses of instruction successfully completed by such peace officers while employed in this state and to include the law enforcement employment history by agency and dates of service of the officer. Such information shall be made available to any law enforcement agency upon request when a person applies for employment at the requesting law enforcement agency.

(j) To allow a peace officer of a federally recognized Indian tribe within the boundaries of this state to attend the peace officer standards and training academy if said peace officer meets minimum physical and educational requirements of the academy. The Indian tribal law enforcement agency shall reimburse the peace officer standards and training academy for the officer's training. Upon satisfactory completion of the peace officer standards and training academy, the tribal peace officer shall receive a certificate of satisfactorily completing the academy.

(2) After January 1, 1974, any peace officer as defined in section 19-5101(d), Idaho Code, employed after January 1, 1974, except any elected official or deputy serving civil process, the deputy director of the Idaho state police, or any person serving under a temporary commission with any law enforcement agency in times of natural or man-caused disaster declared to be an emergency by the board of county commissioners or by the governor of

the state of Idaho, or those peace officers whose primary duties involve motor vehicle parking and animal control pursuant to city or county ordinance, or any peace officer acting under a special deputy commission from the Idaho state police, shall be certified by the council within one (1) year of employment; provided, however, that the council may establish criteria different than that required of other peace officers for certification of city police chiefs or administrators within state agencies having law enforcement powers, who, because of the number of full-time peace officers they supervise, have duties which are primarily administrative. Any such chief of police or state agency administrator employed in such capacity prior to July 1, 1987, shall be exempt from certification.

(3) No peace officer shall have or exercise any power granted by any statute of this state to peace officers unless such person shall have been certified by the council within one (1) year of the date upon which such person commenced employment as a peace officer, except in cases where the council, for good cause and in writing, has granted additional time to complete such training. The council shall decertify any officer who is convicted of any felony or offense which would be a felony if committed in this state. The council may decertify any officer who:

(a) Is convicted of any misdemeanor;

(b) Willfully or otherwise falsifies or omits any information to obtain any certified status; or

(c) Violates any of the standards of conduct as established by the council's code of ethics, as adopted and amended by the council.

All proceedings taken by the council shall be conducted in accordance with chapter 52, title 67, Idaho Code.

(4) Any law enforcement agency as defined in section 19-5101(c), Idaho Code, in which any peace officer shall resign as a result of any disciplinary action or in which a peace officer's employment is terminated as a result of any disciplinary action, shall, within fifteen (15) days of such action, make a report to the council.

(5) The council shall, pursuant to the requirements of this section, establish minimum basic training and certification standards for county detention officers that can be completed within one (1) year of employment as a county detention officer.

(6) The council may, upon recommendation of the juvenile training council and pursuant to the requirements of this section, implement minimum basic training and certification standards for juvenile detention officers, juvenile probation officers, and employees of the Idaho department of juvenile corrections who are engaged in the direct care and management of juveniles.

(7) The council may, upon recommendation of the correction standards and training council, and pursuant to the requirements of this section, establish minimum basic training and certification standards for state correction officers and for adult probation and parole officers.

(8) The council may, upon recommendation of a probation training advisory committee and pursuant to the requirements of this section, establish minimum basic training, continuing education and certification

standards for misdemeanor probation officers whether those officers are employees of or by private sector contract with a county.

(9) The council may reject any applicant for certification who has been convicted of a misdemeanor, and the council shall reject an applicant for certification who has been convicted of a felony, the punishment for which could have been imprisonment in a federal or state penal institution.

(10) As used in this section, "convicted" means a plea or finding of guilt, notwithstanding the form of judgment or withheld judgment, regardless of whether the sentence is imposed, suspended, deferred or withheld, and regardless of whether the plea or conviction is set aside or withdrawn or the case is dismissed or reduced under section 19-2604, Idaho Code, or any other comparable statute or procedure where the setting aside of the plea or conviction, or dismissal or reduction of the case or charge, is based upon lenity or the furtherance of rehabilitation rather than upon any defect in the legality or factual basis of the plea, finding of guilt or conviction.

History.

I.C., § 19-5109, as added by 1981, ch. 307, § 2, p. 629; am. 1987, ch. 180, § 1, p. 356; am. 1992, ch. 248, § 2, p. 730; am. 1997, ch. 84, § 2, p. 199; am. 1997, ch. 234, § 1, p. 683; am. 1999, ch. 154, § 2, p. 428; am. 2000, ch. 113, § 1, p. 250; am. 2000, ch. 469, § 37, p. 1450; am. 2001, ch. 143, § 1, p. 510; am. 2002, ch. 84, § 1, p. 187; am. 2005, ch. 131, § 2, p. 417; am. 2006, ch. 47, § 1, p. 136; am. 2006, ch. 246, § 1, p. 753; am. 2008, ch. 88, § 4, p. 244; am. 2009, ch. 115, § 1, p. 370; am. 2011, ch. 128, § 3, p. 354.

Compiler's Notes. Sections 1 and 3 of S.L. 2005, ch. 131 are compiled as §§ 19-510A and 20-209C, respectively.

This section was amended by two 2006 acts which appear to be compatible and have been compiled together.

The 2006 amendment, by ch. 47, redesignated the paragraphs in the section to conform to the state's standard designation scheme; deleted former subsection (a)(10) which read: "To receive applications for financial assistance from the state and from political subdivisions and disburse available state funds to the state and to political subdivisions for salaries and allowable living expenses or any part thereof, as authorized by the council, incurred while in attendance at approved training programs and schools. The annual reimbursements authorized by this section shall not exceed the funds available for such purpose and authorized by section 31-3201B, Idaho Code"; in the introductory paragraph of present subsection (3), substituted "shall decertify any officer who is convicted of" for "may decertify any officer who pleads guilty or is found guilty, regardless of the form of judgment or withheld judgment of" near the end of the second sentence and added the last sentence; substituted "Is convicted of any misdemeanor" for "a misdemeanor" in present (3)(a); deleted former subsection (c)(3) which read: "Any unlawful use, possession, sale or delivery of any controlled substance; or who"; substituted "conducted" for "done" in the paragraph following present subsection (3)(c); substituted "fifteen (15) days" for "thirty (30) days" in present subsection (4); and added present subsections (8) and (9).

The 2006 amendment, by ch. 246, added "and employees of the Idaho department of juvenile corrections who are engaged in the direct care and management of juveniles" in subsection (6).

The 2008 amendment, by ch. 88, added subsection (8) and redesignated the subsequent subsections accordingly.

The 2009 amendment, by ch. 115, in subsection (1)(i), in the first sentence, added "and to include the law enforcement employment history by agency and dates of service of the officer" and added the last sentence.

The 2011 amendment, by ch. 128, in subsection (8), inserted "continuing education" and added "whether those officers are employees of or by private sector contract with a county."

Peace Officer.

Defendant's conviction and sentence, pursuant to § 18-915, for battery on a peace officer were proper because the evidence was sufficient to show that the victim, who was an inmate with defendant, was a former bailiff and peace officer as defined by § 19-5101 and this section. State v. Herrera, 152 Idaho 24, 266 P.3d 499 (Ct. App. 2011).

Opinions of Attorney General. The act creating the Peace Officer Standards and Training (POST) Council does not grant the Council the authority to certify the employees of a private entity as peace officers, because the term "peace officers" includes only a dis-

crete group of qualified public officers. OAG 08-02.

19-5112. Agreement by officer to serve — Violations. — (1) Any peace officer attending such schools or programs shall execute an agreement whereby said officer promises to remain within the law enforcement profession in the state of Idaho in a position approved by rules and regulations of the council for two (2) years following graduation, subject only to such disqualifications as established by the council and included within the agreement.

(2) Violation of the provisions of this section or the terms of any contract or agreement entered into pursuant to such section shall give rise to a civil action which may be commenced by the council for and on behalf of the state of Idaho for restitution of any and all sums paid by the council plus costs and reasonable attorney's fees.

History.
I.C., § 19-5112, as added by 1981, ch. 307, § 2, p. 629; am. 2006, ch. 47, § 2, p. 136.

Compiler's Notes. The 2006 amendment, by ch. 47, redesignated former subsections (a) and (b) as (1) and (2), and deleted "or directly or indirectly receiving the aid authorized by section 19-5109, Idaho Code," following "schools or programs" in present subsection (1).

19-5116. Peace officers standards and training fund. — (a) There is hereby established in the state treasury, the peace officers standards and training fund. All moneys deposited to the fund shall be expended by the peace officer standards and training council for the following purposes:

(1) Training peace officers, county detention officers, and self-sponsored students within the state of Idaho, including, but not limited to, sheriffs and their deputies, officers of the Idaho state police and conservation officers of the Idaho department of fish and game, and city and county prosecutors and their deputies;

(2) Salaries, costs and expenses relating to such training as provided in subsection (1) of this section;

(3) Such capital expenditures as the peace officer standards and training council may provide for the acquisition, construction and/or improvement of a peace officer standards and training academy; and

(4) Such expenditures as may be necessary to aid approved peace officers training programs or county detention officer programs certified as having met the standards established by the peace officer standards and training council.

(b) The peace officers standards and training fund shall be funded as provided in sections 31-3201A and 31-3201B, Idaho Code.

(c) All contributions and other moneys and appropriations which are designated for peace officers standards and training shall be deposited in the peace officers standards and training fund.

(d) Moneys received into the fund as provided in subsection (c) of this section, shall be accounted for separately.

(e) If the fiscal year-end balance in the fund pursuant to sections 31-3201A and 31-3201B, Idaho Code, exceeds one million dollars ($1,000,000) the excess shall revert to the general fund.

(f) Moneys received into the fund pursuant to the provisions of section 31-3201D, Idaho Code, shall be used for the purposes of providing basic training, continuing education and certification of misdemeanor probation officers whether those officers are employees of or by private sector contract with a county.

History.
I.C., § 19-5116, as added by 1983, ch. 117, § 1, p. 258; am. 1994, ch. 191, § 1, p. 620; am. 1997, ch. 84, § 3, p. 199; am. 1998, ch. 150, § 1, p. 521; am. 2000, ch. 469, § 40, p. 1450; am. 2003, ch. 237, § 2, p. 607; am. 2011, ch. 128, § 4, p. 354.

Compiler's Notes. The 2011 amendment, by ch. 128, added subsection (f).

19-5117. Powers of the council — Standards of training, education and employment of county detention officers — Certification — Penalties. — (1) It shall be the duty of and the council shall have the power:

(a) To establish the requirements of minimum basic training which county detention officers shall complete in order to be eligible for permanent employment as a county detention officer;

(b) To establish such basic training and certification so that it can be completed within one (1) year of employment as a county detention officer;

(c) To establish the requirements of minimum training standards for employment as a county detention officer in probationary, temporary, part-time and/or emergency situations;

(d) To certify county detention officers as having completed all requirements established by the council in order to be eligible for permanent employment as a county detention officer;

(e) To receive applications for financial assistance from counties and disburse available state funds to the counties for salaries and allowable living expenses or any part thereof, incurred while in attendance at approved training programs and schools, as authorized by the council. The annual reimbursement authorized by this section shall not exceed the funds available for such purpose and authorized by section 31-3201B, Idaho Code;

(f) To maintain permanent files and transcripts for all county detention officers certified by the council to include any additional courses or advance courses of instruction successfully completed by such county detention officers while employed in this state and to include the law enforcement employment history by agency and dates of service of the officer. Such information shall be made available to any law enforcement agency upon request when a person applies for employment at the requesting law enforcement agency.

(2) Any county detention officer employed after July 1, 1997, shall be trained and certified within one (1) year of employment. Current county detention officers, who were employed prior to July 1, 1997, shall comply with the training and certification provisions of this section by July 1, 1999.

History.
I.C., § 19-5117, as added by 1997, ch. 84, § 4, p. 199; am. 2009, ch. 115, § 2, p. 370.

Compiler's Notes. The 2009 amendment, by ch. 115, added subsection (1)(f).

19-5118. Power of the council to establish and assess fees. — (1) The council may establish and assess fees for:

(a) The use of its facilities and equipment by private entities and non-law enforcement institutions;

(b) The use of its facilities and equipment by law enforcement agencies for purposes other than basic training; and

(c) Facilitating, arranging, providing or assisting with the training, certification or continuing education requirements of private entities, non-law enforcement institutions and law enforcement agencies.

(2) The council shall deposit assessed fees into the peace officer standards and training fund established in section 19-5116, Idaho Code. The council may expend moneys as deemed necessary to cover the costs for the uses identified in this section.

History.
I.C., § 19-5118, as added by 2012, ch. 166, § 1, p. 447.

CHAPTER 52

PUBLIC SAFETY AND SECURITY INFORMATION SYSTEM

19-5201. Idaho public safety and security information system — Intent and purpose. — The maintenance of law and order is, and always has been, a primary function of government and is so recognized in both federal and state constitutions. The state has an unmistakable responsibility to give full support to all public agencies of the criminal justice system. This responsibility includes the provision of an efficient law enforcement information system available to all state and local agencies. It is the intent of the legislature that such a system be established and maintained in a condition adequate to the needs of public safety and security. It is the purpose of this chapter to establish a public safety and security information system, known as "ILETS," for the state of Idaho.

History.
1971, ch. 195, § 1, p. 884; am. 2005, ch. 115, § 3, p. 371.

Compiler's Notes. Section 1 and 4 of S.L. 2005, ch. 115 are compiled as §§ 18-8324 and 19-5202, respectively.

19-5202. Establishment of information system — Use — Access charge — Interstate connection. — (1) Establishment of information system. The director of the Idaho state police shall establish a public safety and security information system, known as "ILETS," which will interconnect the criminal justice agencies of this state and its political subdivisions and all agencies engaged in the promotion of highway safety into a unified information system. The director is authorized to lease such transmitting and receiving facilities and equipment as may be necessary to establish and maintain such a system.

(2) Use of information system. The public safety and security information system, known as "ILETS," shall be used exclusively for the law enforcement and criminal justice business of the state of Idaho and all the political subdivisions thereof, including all agencies engaged in the promotion of traffic safety.

(3) Judiciary and traffic safety. Nothing in this chapter shall prohibit the use of or participation in the information system herein provided by the judicial branch of the state government or by any other department, agency or branch of state or local government engaged in traffic safety.

(4) Access. The quarterly access fee to be charged each department or agency participating in the information system shall be set by the public safety and security information board, known as the "ILETS board," and in setting such fee the board shall take into consideration the usage of said system by each participant. There is hereby created the public safety and security information fund, to be known as the ILETS fund. All access fees collected under the provisions of this chapter shall be paid into the fund.

(5) Interstate connection. The public safety and security information system provided for herein is hereby authorized to connect and participate with information systems of other states and provinces of Canada.

History.
1971, ch. 195, § 2, p. 884; am. 1974, ch. 27, § 10, p. 811; am. 1983, ch. 181, § 1, p. 491; am. 2000, ch. 469, § 41, p. 1450; am. 2005, ch. 115, § 4, p. 371.

Compiler's Notes. Section 3 and 5 of S.L. 2005, ch. 115 are compiled as §§ 19-5201 and 19-5203, respectively.

19-5203. Public safety and security information system board — Creation — Composition — Terms — Rules — Compensation of members. — (1) There is hereby created within the Idaho state police a public safety and security information system board, to be known as the ILETS board, which shall be composed of five (5) members appointed by the governor.

The members of the information system board shall be composed of the following:

(a) Two (2) incumbent county sheriffs;

(b) Two (2) incumbent city chiefs of police;

(c) One (1) member of the Idaho state police.

(2) The term of office of the first board shall be staggered with the one (1) appointment expiring January 1, 1972; one (1) appointment expiring January 1, 1973; one (1) appointment expiring January 1, 1974; one (1)

appointment expiring January 1, 1975; and one (1) appointment expiring January 1, 1976.

Thereafter, the term of office of each chief of police, sheriff and member of the Idaho state police shall be for a term of five (5) years.

The director of the Idaho state police shall be a permanent member of the board.

In the event any chief of police, sheriff or member of the Idaho state police ceases to be such chief of police, sheriff, or member of the Idaho state police his appointment to said board shall terminate and cease immediately and the governor shall appoint a qualified person in such category to fill the unexpired term of such member.

(3) The board shall, upon their appointment, adopt such rules, procedures and methods of operation as may be necessary to establish and put into use the most efficient and economical statewide public safety and security information system and shall publish and distribute said rules and procedures to each participating department, agency or office.

(4) The public safety and security information system board shall have exclusive management control over the entire Idaho public safety and security information system, which includes all hardware, software, electronic switches, peripheral gear, microwave links, and circuitry which make up the system and any access thereto. The term public safety and security information system shall mean the information system established by the director of the Idaho state police pursuant to subsection (1) of section 19-5202, Idaho Code, and shall not apply to any type of voice-oriented transmission whether it be by mobile radio, microwave or telephone.

(5) Salaries and expenses. Members of said board shall be compensated as provided by section 59-509(b), Idaho Code, which expenses shall be paid from moneys appropriated for the funding of this chapter.

The performance of duties under this chapter by a member of the board shall be deemed to be in performance of his duties as an employee of his particular branch of government.

(6) Federal funding, gifts, donations. The director is authorized to apply for and accept federal funds granted by the congress of the United States, or by executive order, all of which must be deposited in the ILETS fund, and which may be expended only after a legislative appropriation. The director may accept gifts and donations from individuals and private organizations or foundations for all or any of the purposes of chapter 52, title 19, Idaho Code.

History.

1971, ch. 195, § 3, p. 884; am. 1974, ch. 27, § 11, p. 811; am. 1980, ch. 247, § 4, p. 582; am. 1983, ch. 181, § 2, p. 491; am. 1989, ch. 131, § 1, p. 285; am. 2000, ch. 469, § 42, p. 1450; am. 2005, ch. 115, § 5, p. 371.

Compiler's Notes. Section 4 and 6 of S.L. 2005, ch. 115 are compiled as §§ 19-5202 and 19-5204, respectively.

19-5204. Executive officer of board. — The director of the Idaho state police shall be the executive officer of the ILETS board and shall be responsible for the carrying out of the policies and rules of the board and

with the management and expenditures of such funds as may be appropriated to implement this chapter.

History.
1971, ch. 195, § 4, p. 884; am. 1974, ch. 27, § 12, p. 811; am. 2000, ch. 469, § 43, p. 1450; am. 2005, ch. 115, § 6, p. 371.

Compiler's Notes. Section 5 and 7 of S.L. 2005, ch. 115 are compiled as §§ 19-5203 and 67-3008, respectively.

CHAPTER 53

COMPENSATION OF VICTIMS OF CRIMES

SECTION.

19-5301. Distribution of moneys received as a result of the commission of crime.

Cited in: State v. Lampien, 148 Idaho 367, 223 P.3d 750 (2009). =alr Mandatory Victims Restitution Act — Constitutional issues. 20 A.L.R. Fed. 2d 239.

19-5302. Victims of crime — Restitution priority.

A.L.R. Measure and elements of restitution to which victim is entitled under state criminal statute — Payment for installation of alarm or locks or change of locks due to burglary, attempted burglary, or felonious breaking and entering. 44 A.L.R.6th 301.

Propriety, measure, and elements of restitution to which victim is entitled under state criminal statute — Cruelty to, killing, or abandonment of, animals. 45 A.L.R.6th 435.

Mandatory Victims Restitution Act — Measure and elements of restitution to which victim is entitled. 51 A.L.R. Fed 2d 169.

19-5304. Restitution for crime victims — Orders to be separate — When restitution is not appropriate — Other remedies — Evidentiary hearings — Definitions. — (1) As used in this chapter:

(a) "Economic loss" includes, but is not limited to, the value of property taken, destroyed, broken, or otherwise harmed, lost wages, and direct out-of-pocket losses or expenses, such as medical expenses resulting from the criminal conduct, but does not include less tangible damage such as pain and suffering, wrongful death or emotional distress.

(b) "Found guilty of any crime" shall mean a finding by a court that a defendant has committed a criminal act and shall include an entry of a plea of guilty, an order withholding judgment, suspending sentence, or entry of judgment of conviction for a misdemeanor or felony.

(c) "Value" shall be as defined in section 18-2402(11), Idaho Code.

(d) "Property" shall be as defined in section 18-2402(8), Idaho Code.

(e) "Victim" shall mean:

(i) The directly injured victim which means a person or entity, who suffers economic loss or injury as the result of the defendant's criminal conduct and shall also include the immediate family of a minor and the immediate family of the actual victim in homicide cases;

(ii) Any health care provider who has provided medical treatment to a directly injured victim if such treatment is for an injury resulting from the defendant's criminal conduct, and who has not been otherwise compensated for such treatment by the directly injured victim or the immediate family of the directly injured victim;

(iii) The account established pursuant to the crime victims compensation act, chapter 10, title 72, Idaho Code, from which payment was made to or on behalf of a directly injured victim pursuant to the requirements of Idaho law as a result of the defendant's criminal conduct;

(iv) A person or entity who suffers economic loss because such person or entity has made payments to or on behalf of a directly injured victim pursuant to a contract including, but not limited to, an insurance contract, or payments to or on behalf of a directly injured victim to pay or settle a claim or claims against such person or entity in tort or pursuant to statute and arising from the crime.

(2) Unless the court determines that an order of restitution would be inappropriate or undesirable, it shall order a defendant found guilty of any crime which results in an economic loss to the victim to make restitution to the victim. An order of restitution shall be a separate written order in addition to any other sentence the court may impose, including incarceration, and may be complete, partial, or nominal. The court may also include restitution as a term and condition of judgment of conviction; however, if a court orders restitution in the judgment of conviction and in a separate written order, a defendant shall not be required to make restitution in an amount beyond that authorized by this chapter. Restitution shall be ordered for any economic loss which the victim actually suffers. The existence of a policy of insurance covering the victim's loss shall not absolve the defendant of the obligation to pay restitution.

(3) If the court determines that restitution is inappropriate or undesirable or if only partial or nominal restitution is ordered, it shall enter an order articulating the reasons therefor on the record.

(4) If a separate written order of restitution is issued, an order of restitution shall be for an amount certain and shall be due and owing at the time of sentencing or at the date the amount of restitution is determined, whichever is later. An order of restitution may provide for interest from the date of the economic loss or injury.

(5) The court may order the defendant to pay restitution to the victim in any case, regardless of whether the defendant is incarcerated or placed on probation. The court may order the defendant to pay all or a part of the restitution ordered to the court to be distributed by the court to the victims in a manner the court deems just.

(6) Restitution orders shall be entered by the court at the time of sentencing or such later date as deemed necessary by the court. Economic loss shall be based upon the preponderance of evidence submitted to the court by the prosecutor, defendant, victim or presentence investigator. Each party shall have the right to present such evidence as may be relevant to the issue of restitution, and the court may consider such hearsay as may be

contained in the presentence report, victim impact statement or otherwise provided to the court.

(7) The court, in determining whether to order restitution and the amount of such restitution, shall consider the amount of economic loss sustained by the victim as a result of the offense, the financial resources, needs and earning ability of the defendant, and such other factors as the court deems appropriate. The immediate inability to pay restitution by a defendant shall not be, in and of itself, a reason to not order restitution.

(8) In determining restitution, where it appears that more than one (1) person is responsible for a crime that results in economic loss to a victim, and one (1) or more of the suspects or defendants are not found, apprehended, charged, convicted or ordered to pay restitution, the court may require the remaining defendant or defendants, who are convicted of or plead guilty to the crime, to be jointly and severally responsible for the entire economic loss to the victim.

(9) The court may, with the consent of the parties, order restitution to victims, and/or any other person or entity, for economic loss or injury for crimes which are not adjudicated or are not before the court.

(10) A defendant, against whom a restitution order has been entered, may, within forty-two (42) days of the entry of the order of restitution, request relief from the restitution order in accordance with the Idaho rules of civil procedure relating to relief from final orders.

(11) An order of restitution shall not preclude the victim from seeking any other legal remedy.

(12) Every presentence report shall include a full statement of economic loss suffered by the victim or victims of the defendant's crime or crimes.

(13) If there is more than one (1) victim, the restitution order shall provide that the directly injured victim(s) be fully compensated for so much of the loss caused by the defendant's criminal conduct which has not been paid by a third party, including persons referred to in subsection (1)(e)(ii), (iii) and (iv) of this section.

(14) When a person is found guilty of violating section 18-8007, Idaho Code, the court, in addition to any other sentence imposed, may order the person to pay to any victim an amount of money equal to the amount of that victim's economic loss caused by the person as a result of the incident that created the duties as provided in section 18-8007, Idaho Code.

History.

I.C., § 19-5304, as added by 1985, ch. 122, § 1, p. 296; am. 1986, ch. 197, § 2, p. 494; am. 1991, ch. 324, § 1, p. 841; am. 1997, ch. 112, § 1, p. 272; am. 1999, ch. 338, § 1, p. 916; am. 2007, ch. 62, § 1, p. 152; am. 2008, ch. 140, § 2, p. 402; am. 2008, ch. 152, § 1, p. 440.

Compiler's Notes. The 2007 amendment, by ch. 62, substituted "payment was made to or on behalf of a directly injured victim pursuant to the requirements of Idaho law as a result of the defendant's criminal conduct" for "payment was made for medical treatment, services or monetary benefits for injury resulting from the defendant's criminal conduct" in subsection (1)(e)(iii).

This section was amended by two 2008 acts which appear to be compatible and have been compiled together.

The 2008 amendment, by ch. 140, added the language beginning "or payments to or on behalf of a directly injured victim" in subsection (1)(e)(iv).

The 2008 amendment, by ch. 152, added subsection (14).

Cited in: State v. Peterson, — Idaho —, 280 P.3d 184 (Ct. App. 2012).

Analysis

Abatement ab initio.
Appropriateness of restitution.
Award reasonable.
Calculation.
Consent to restitution.
Constitutionality.
Contractual obligation.
Discretion.
Economic loss.
Entry of order.
Plea agreement.
Preventative measures.
Scope of restitution.
Separate hearing.
Victim.

Abatement Ab Initio.

Shortly after defendant was released from prison, and while his appeal was still pending, he died. The supreme court refused to abate, ab initio, fees, costs, and restitution that the trial court had imposed; abatement was against strong public policy in favor of victim's rights, and defendant's death only abated the time of incarceration. State v. Korsen, 141 Idaho 445, 111 P.3d 130 (2005).

Appropriateness of Restitution.

Under subsection (2), the trial court could order restitution for any economic loss that the victim actually suffered, and where the employees of the victim business spent time away from their normal duties in order to determine the extent of defendant's theft, the time spent was compensable through restitution; further, court attendance costs could be awarded under this section and defendant did not show that the restitution order exceeded the bounds of the trial court's permissible choices, was inconsistent with the applicable legal standards, or was not based upon an exercise of reason. State v. Olpin, 140 Idaho 377, 93 P.3d 708 (Ct. App. 2004).

District court erred in affirming the magistrate's denial of restitution where the testimony of the victim, along with the medical bills, presented a prima facie case for an award of restitution; on remand, the magistrate had to decide if restitution was appropriate and which party would be responsible. State v. Doe (In re Doe), 146 Idaho 277, 192 P.3d 1101 (Ct. App. 2008).

Defendant was not required to pay restitution for a victim's massages, colon cleansings, and footbaths, because no medical evidence was presented that the victim suffered from any identifiable physical condition treatable by these therapies as a result of the automobile collision for which defendant was at fault. State v. Card, 146 Idaho 111, 190 P.3d 930 (Ct. App. 2008).

Restitution was properly ordered where it was foreseeable that defendant's conduct, in resisting arrest, would elicit a physical response from the officer, putting the officer in a position to injure his knee. Defendant repeatedly dismissed the officer's requests for defendant to cooperate and submit to arrest. It was defendant's acts of attempting to pull away from the officer during arrest that precipitated the need for the officer to gain control of defendant and, in so doing, twist his knee. State v. Cottrell, 152 Idaho 387, 271 P.3d 1243 (Ct. App. 2012).

Award Reasonable.

Where state insurance fund covered expenses for injured correctional officer and evidence showed that the restitution award was based on a list of expenses incurred by the fund and provided to the magistrate, and defendant provided nothing to show the amount of benefits paid were greater than required under the insurance contract or unreasonable in relation to the harm suffered by the officer, the award was considered reasonable. State v. Cottrell, 152 Idaho 387, 271 P.3d 1243 (Ct. App. 2012).

Calculation.

The best evidence available included video surveillance of defendant engaging in 53 suspicious no sale events over six days, the cash found in appellant's back pocket upon her arrest, and the excessive no sale events that averaged over 10 per shift over a three-year period. The grocery store co-owner used the best evidence available to determine the probable amount stolen, and the prosecution presented other evidence supporting the restitution request. State v. Lombard, 149 Idaho 819, 242 P.3d 189 (Ct. App. 2010).

Defendant was not entitled to a jury trial to determine the amount of restitution under Idaho Const. art. I, § 7. First, if the restitution was rooted in equity, no right to a jury trial applied, and second, § 19-2601 and this section both allow a court to award restitution without a jury trial. Idaho Const. art. I, § 22, preserving a criminal victim's statutory rights, including the restitution right, does not explicitly provide for a right to a jury trial. State v. Straub, — Idaho —, 292 P.3d 273 (2013).

Consent to Restitution.

Sizable restitution requirement of probation imposed on defendant who pleaded guilty to leaving the scene of an injury accident was upheld, even though victim's economic loss was a result of the accident rather than a direct result of defendant's criminal act of leaving, because defendant had consented to pay restitution as a part of his plea agreement. State v. Shafer, 144 Idaho 370, 161 P.3d 689 (Ct. App. 2007).

Trial court erred, under subsection (2), in its award of restitution after defendant pled

guilty to felony DUI, where the only words in the plea agreement relating to restitution were that restitution was not to exceed $1,156; the words of the agreement included no expression of consent by defendant to pay any specific amount of restitution or to pay for any specified economic loss. State v. Nienburg, — Idaho —, 283 P.3d 808 (Ct. App. 2012).

Constitutionality.

Criminal restitution in Idaho is remedial and compensatory in nature, rather than punitive; therefore, the excessive fines clauses of the United States and Idaho Constitutions, U.S. Const. amend. VIII and Idaho Const. art. I, § 6, are inapplicable to Idaho criminal restitution awards. State v. Cottrell, 152 Idaho 387, 271 P.3d 1243 (Ct. App. 2012).

Contractual Obligation.

In prosecution against employee who had embezzled over $200,000 from doctor's office, trial court improperly ordered restitution to bank and insurer who had previously settled with doctor, as there was no evidence offered that these settlements were paid pursuant to a contractual obligation. However, defendant was still responsible for paying the full amount of restitution to the doctor. State v. Cheeney, 144 Idaho 294, 160 P.3d 451 (Ct. App. 2007).

Discretion.

Determination of an appropriate restitution amount is left to the sound discretion of the district court, and the appellate court defers to the weight given by the district court to such evidence. State v. Lombard, 149 Idaho 819, 242 P.3d 189 (Ct. App. 2010).

Economic Loss.

Order requiring defendant to pay restitution for the cost of puppy boarding after an attempted burglary was vacated because the cost of puppy boarding as a preventive measure following the crime did not qualify as a direct out-of-pocket loss or expense. The loss fell under the "less tangible damage" language of the statute, and was excluded from the definition of "economic loss." State v. Waidelich, 140 Idaho 622, 97 P.3d 489 (Ct. App. 2004).

Trial court did not abuse its discretion in awarding restitution for lost earnings in the amount of $3,300 to the father and $2,700 to the mother of a four-year old child, upon whom a juvenile defendant was found guilty of committing lewd conduct, where the awards were based on each parent's gross earnings per day and days missed from work for matters related to the criminal action. State v. Doe (In re Doe), 140 Idaho 873, 103 P.3d 967 (Ct. App. 2004).

Appellate court reversed the order requiring defendant to pay the victim's attorney's fees from the civil lawsuit as restitution and a condition of her probation, as the attorney's fees did not constitute an economic loss and the civil lawsuit encompassed claims not related to the forgery charge. State v. Parker, 143 Idaho 165, 139 P.3d 767 (Ct. App. 2006) (See State v. Gonzales, 144 Idaho 775, 171 P.3d 266 (Ct. App. 2007)).

Generally, the "market value" of consumer goods is the reasonable price at which the owner would hold those goods out for sale to the general public, as opposed to the "cost of replacement" which would be the cost for the owner to reacquire the same goods; therefore, the district court did not err in calculating the amount of restitution owed for the property stolen by defendant by using the ascertained retail value of that property. State v. Smith, 144 Idaho 687, 169 P.3d 275 (Ct. App. 2007).

Defendant was not required to pay sexual assault victim restitution for tuition and supplies that she had forfeited when she dropped out of a massage therapy program because she was afraid that another similar incident would occur. State v. Gonzales, 144 Idaho 775, 171 P.3d 266 (Ct. App. 2007).

In a case in which defendant was convicted of conspiracy to commit robbery for his role in the armed robbery of a convenience store, restitution for the victim's lost wages was appropriate under this section, where the record established that the victim began exhibiting symptoms immediately following his return to work, that he sought counseling as a result, and that his counselor attributed his symptoms to the robbery incident and recommended that he quit his job due to those symptoms. State v. Higley, 151 Idaho 76, 253 P.3d 750 (Ct. App. 2010).

Absent an agreement to the contrary, restitution may be ordered for an economic loss or injury only if there is a causal connection between the conduct for which the defendant was convicted and the loss suffered by the victim. This causation consists of actual cause and proximate cause. A "but for" test is used to determine whether an event was an actual cause, while proximate cause deals with whether it was reasonably foreseeable that the loss would flow from the criminal conduct. The proximate cause inquiry requires a court to determine whether the injury and manner of occurrence are so highly unusual that a reasonable person, making an inventory of the possibilities of harm which his conduct might produce, would not have reasonably expected the injury to occur. Thus, when a defendant has been charged with multiple crimes and pleads guilty to part of the charges in exchange for dismissal of the remainder, restitution is not ordinarily awardable for loss or injury actually and proximately caused

only by the offenses for which the charges were dismissed. State v. Nienburg, — Idaho —, 283 P.3d 808 (Ct. App. 2012).

In a grand theft case, a district court did not err by ordering defendant to pay restitution to two members of a limited liability company for the economic loss suffered as a result of defendant's criminal conduct; the amount awarded was based upon defendant's criminal activity, it was not appropriate to use a setoff based on the proceeds from the sale of defendant's home, and it would have been an anomaly for defendant to profit from his own wrongdoing by receiving credit for one-third of the economic loss to the firm by his own misappropriations. State v. Hill, — Idaho —, 296 P.3d 412 (Ct. App. 2012).

Entry of order.

A separate restitution hearing was not required after defendant was convicted of grand theft, because neither defendant's constitutional due process rights nor this section were violated. Defendant did present evidence relevant to the issue of restitution at sentencing. State v. Blair, 149 Idaho 720, 239 P.3d 825 (Ct. App. 2010).

Plea Agreement.

Under this section, the court in a criminal case properly entered a civil judgment for restitution against a defendant who agreed to plead guilty to two counts of trafficking in cocaine and one count of conspiracy to traffic in cocaine, even though there was no mention of restitution in the plea agreement. State v. Gomez, — Idaho —, 281 P.3d 90 (2012).

When a plea agreement expressly provides that the defendant will pay restitution for losses that are not covered by worker's compensation or other insurance, it can reasonably be understood to mean that the State will not request restitution for losses that are covered by worker's compensation or medical insurance; that is, the itemization of a type of cost that the defendant expressly agrees to pay may reasonably be understood to implicitly exclude the obligation to pay any other type of cost. State v. Acuna, — Idaho —, 294 P.3d 1151 (Ct. App. 2013).

Preventative Measures.

The cost of preventative measures taken by a victim after a crime are not direct out-of-pocket expenses that are reimbursable under this section. State v. Higley, 151 Idaho 76, 253 P.3d 750 (Ct. App. 2010).

Scope of Restitution.

It was an abuse of discretion for a district court to order a defendant to pay a deceased victim's future lost wages or his family's future health insurance costs as restitution. While this section allows for restitution of any actual economic loss resulting from a defendant's criminal conduct, including lost wages, only actual out-of-pocket medical expenses and lost wages up to the date of sentencing could be included in a restitution order. Possible future wages were inapposite to "actually suffered" economic loss as contemplated in the statute. State v. Straub, — Idaho —, 292 P.3d 273 (2013).

Separate Hearing.

Trial court did not err when it denied defendant's motion for a separate restitution hearing after defendant was convicted of grand theft: neither defendant's constitutional due process rights nor her rights under this section were violated as defendant was fully afforded the opportunity and did present evidence relevant to the issue of restitution at both her trial and her sentencing hearing. State v. Blair, 149 Idaho 720, 239 P.3d 825 (Ct. App. 2010).

Victim.

Under this section the state insurance fund could be considered a "victim" entitled to request restitution for workers' compensation payment made to or on behalf of an injured officer. State v. Acuna, — Idaho —, 294 P.3d 1151 (Ct. App. 2013).

A.L.R. Mandatory Victims Restitution Act — Constitutional issues. 20 A.L.R. Fed. 2d 239.

Mandatory Victims Restitution Act — Measure and elements of restitution to which victim is entitled. 51 A.L.R. Fed 2d 169.

Construction and application of mandatory restitution for Sexual Exploitation of Children Act, 18 U.S.C.S. § 2259. 70 A.L.R. Fed. 2d 409.

19-5305. Collection of judgments. — (1) After forty-two (42) days from the entry of the order of restitution or at the conclusion of a hearing to reconsider an order of restitution, whichever occurs later, an order of restitution may be recorded as a judgment and the victim may execute as provided by law for civil judgments.

(2) The clerk of the district court may take action to collect on the order of restitution on behalf of the victim and, with the approval of the administrative district judge, may use the procedures set forth in section 19-4708, Idaho Code, for the collection of the restitution.

History.

I.C., § 19-5305, as added by 1985, ch. 122, § 2, p. 296; am. 2009, ch. 102, § 2, p. 312.

Compiler's Notes. The 2009 amendment, by ch. 102, added the subsection (1) designation and subsection (2).

Cited in: State v. Gomez, — Idaho —, 281 P.3d 90 (2012).

19-5306. Rights of victim during investigation, prosecution, and disposition of the crime.

Cited in: State v. Korsen, 141 Idaho 445, 111 P.3d 130 (2005).

Victim Impact Statement.

Subsequent to the decision in *Payne*, § 22 was added to Article I of the Idaho Constitution guaranteeing rights to crime victims, and Idaho Const. art. I, § 22(6) provides that a crime victim has the right "to be heard, upon request, at all criminal justice proceedings considering a plea of guilty, sentencing, incarceration or release of the defendant, unless manifest injustice would result," language identical to that found in paragraph (1)(e) of this section. State v. Lovelace, 140 Idaho 73, 90 P.3d 298, cert. denied, 543 U.S. 936, 125 S. Ct. 323, 160 L. Ed. 2d 242 (2004).

Because the record did not support the conclusion that the victim's mother was presenting testimony at sentencing at the initiative of or on behalf of the state, the court was unable to conclude that the prosecutor acted contrary to the provisions of the plea agreement where defendant pleaded guilty to aggravated assault in violation of §§ 18-901 and 18-905. Under Idaho Const. art. I, § 22(6) and paragraph (1)(e) of this section, crime victims were guaranteed the right to be heard upon request at sentencing hearings, and the state had informed the trial court that the mother wanted to address the court on behalf of the victim, and the trial court allowed the statement as a victim impact statement, and the issue of whether the trial court erred in allowing the mother to give such a statement was not preserved for review. State v. Jones, 141 Idaho 673, 115 P.3d 764 (Ct. App. 2005).

DVD presentation containing photographic and video images of the victim and her family at the sentencing hearing were proper as a valid exercise of the victim's right to be heard and it did not result in a manifest injustice. State v. Leon, 142 Idaho 705, 132 P.3d 462 (Ct. App. 2006).

Defendant failed to demonstrate that a district court erred in its use of a victim impact statement in a presentence investigation report. District court ruled that the statement was admissible only as victim input and then set forth multiple reasons for defendant's sentence based on the proper sentencing factors. State v. Deisz, 145 Idaho 826, 186 P.3d 682 (Ct. App. 2008).

This section limits victim impact statements to immediate family members. State v. Payne, 146 Idaho 548, 199 P.3d 123 (2008).

When four officers arrived at defendant's apartment seeking her husband who was wanted for felony probation violations, three officers were injured in the attempt to take the husband into custody; defendant pled guilty to harboring and protecting a felon. The three injured officers were properly allowed to give victim impact statements under this section, Idaho Const., art. I, § 22, and Idaho Crim. R. 32(b)(1); the officers were victims of defendant's crime of harboring and protecting her husband. State v. Lampien, 148 Idaho 367, 223 P.3d 750 (2009).

Even though the trial court improperly allowed the testimony of a father in a case involving leaving an injured person at the scene of an accident, it was harmless because the sentencing judge imposed the sentence based on the evidence and without reference to the father's statement. State v. Hansen, — Idaho —, — P.3d —, 2012 Ida. App. LEXIS 76 (Ct. App. Dec. 19, 2012).

Because the defendant did not face the death penalty, the district court properly admitted victim impact statements in which the victim opined about defendant's crime, his character, and the appropriate sentence for his crime. State v. Grant, — Idaho —, 297 P.3d 244 (2013).

19-5307. Fines in cases of crimes of violence. — (1) Irrespective of any penalties set forth under state law, and in addition thereto, the court, at the time of sentencing or such later date as deemed necessary by the court, may impose a fine not to exceed five thousand dollars ($5,000) against any defendant found guilty of any felony listed in subsection (2) of this section.

The fine shall operate as a civil judgment against the defendant, and shall be entered on behalf of the victim named in the indictment or information, or the family of the victim in cases of homicide or crimes against children,

and shall not be subject to any distribution otherwise required in section 19-4705, Idaho Code. The clerk of the district court may collect the fine in the same manner as other fines imposed in criminal cases are collected and shall remit any money collected in payment of the fine to the victim named in the indictment or information or to the family of the victim in a case of homicide or crimes against minor children, provided that none of the provisions of this section shall be construed as modifying the provisions of chapter 6, title 11, Idaho Code, chapter 10, title 55, Idaho Code, or section 72-802, Idaho Code. A fine created under this section shall be a separate written order in addition to any other sentence the court may impose.

The fine contemplated in this section shall be ordered solely as a punitive measure against the defendant, and shall not be based upon any requirement of showing of need by the victim. The fine shall not be used as a substitute for an order of restitution as contemplated in section 19-5304, Idaho Code, nor shall such an order of restitution or order of compensation entered in accordance with section 72-1018, Idaho Code, be offset by the entry of such fine.

A defendant may appeal a fine created under this section in the same manner as any other aspect of a sentence imposed by the court. The imposition of a fine created under this section shall not preclude the victim from seeking any other legal remedy; provided that in any civil action brought by or on behalf of the victim, the defendant shall be entitled to offset the amount of any fine imposed pursuant to this section against any award of punitive damages.

(2) The felonies for which a fine created under this section may be imposed are those described in:

Section 18-805, Idaho Code (Aggravated arson);

Section 18-905, Idaho Code (Aggravated assault);

Section 18-907, Idaho Code (Aggravated battery);

Section 18-909, Idaho Code (Assault with intent to commit a serious felony);

Section 18-911, Idaho Code (Battery with intent to commit a serious felony);

Section 18-913, Idaho Code (Felonious administration of drugs);

Section 18-1501, Idaho Code (Felony injury to children);

Section 18-1506, Idaho Code (Sexual abuse of a child under the age of sixteen);

Section 18-1506A, Idaho Code (Ritualized abuse of a child);

Section 18-1507, Idaho Code (Sexual exploitation of a child);

Section 18-1508, Idaho Code (Lewd conduct with a child under the age of sixteen);

Section 18-1508A, Idaho Code (Sexual battery of a minor child sixteen or seventeen years of age);

Section 18-4001, Idaho Code (Murder);

Section 18-4006, Idaho Code (Felony manslaughter);

Section 18-4014, Idaho Code (Administering poison with intent to kill);

Section 18-4015, Idaho Code (Assault with intent to murder);

Section 18-4502, Idaho Code (First degree kidnapping);

Section 18-5001, Idaho Code (Mayhem);
Section 18-5501, Idaho Code (Poisoning food, medicine or wells);
Section 18-6101, Idaho Code (Rape);
Section 18-6108, Idaho Code (Male rape);
Section 18-6501, Idaho Code (Robbery).

History.

I.C., § 19-5307, as added by 1992, ch. 285, § 1, p. 876; am. 1993, ch. 236, § 1, p. 818; am. 2009, ch. 56, § 1, p. 159; am. 2009, ch. 101, § 1, p. 310.

Compiler's Notes. This section was amended by two 2009 acts which appear to be compatible and have been compiled together.

The 2009 amendment, by ch. 56, added "Section 18-1508A, Idaho Code (Sexual battery of a minor child sixteen or seventeen years of age)" in subsection (2).

The 2009 amendment, by ch. 101, added the second sentence in the second paragraph in subsection (1).

Cited in: State v. Korsen, 141 Idaho 445, 111 P.3d 130 (2005).

CHAPTER 54

RECORDS CHECKS FOR TRANSFERS OF HANDGUNS

SECTION.

19-5401 to 19-5419. [Null and void.]

Compiler's Notes. Section 5 of S.L. 1994, ch. 377 provided that the provisions of this act shall be null, void and of no force and effect on and after the date on which 18 U.S.C. § 922(s) is no longer in effect. Federal Register Volume 60, No. 209 (October 29, 1998) stated that the interim provisions of the Brady law, codified as 18 U.S.C. § 922(s) and which this chapter implemented, ceased to apply on November 30, 1998.

The following sections were null and void:

19-5401. Legislative intent. [I.C., § 19-5401, as added by 1994, ch. 377, § 1, p. 1210.]

19-5402. Definitions. [I.C., § 19-5402, as added by 1994, ch. 377, § 1, p. 1210; am. 2000, ch. 469, § 44, p. 1450.]

19-5403. Transfer of a handgun — Records check. [I.C., § 19-5403, as added by 1994, ch. 377, § 1, p. 1210; am. 1996, ch. 407, § 1, p. 1349.]

19-5404. Dealer identification number — Fee. [I.C., § 19-5404, as added by 1994, ch. 377, § 1, p. 1210.]

19-5405. Proof of identity. [I.C., § 19-5405, as added by 1994, ch. 377, § 1, p. 1210.]

19-5406. Statement of intent transmittal. [I.C., § 19-5406, as added by 1994, ch. 377, § 1, p. 1210.]

19-5407. Toll-free telephone number. [I.C., § 19-5407, as added by 1994, ch. 377, § 1, p. 1210.]

19-5408. Records check. [I.C., § 19-5408, as added by 1994, ch. 377, § 1, p. 1210.]

19-5409. Response. [I.C., § 19-5409, as added by 1994, ch. 377, § 1, p. 1210.]

19-5410. Delay. [I.C., § 19-5410, as added by 1994, ch. 377, § 1, p. 1210.]

19-5411. Review of disapproval. [I.C., § 19-5411, as added by 1994, ch. 377, § 1, p. 1210.]

19-5412. Confidentiality. [I.C., § 19-5412, as added by 1994, ch. 377, § 1, p. 1210.]

19-5413. Wrongful request — Wrongful dissemination. [I.C., § 19-5413, as added by 1994, ch. 377, § 1, p. 1210.]

19-5414. False statement — False identification. [I.C., § 19-5414, as added by 1994, ch. 377, § 1, p. 1210.]

19-5415. Wrongful transfer. [I.C., § 19-5415, as added by 1994, ch. 377, § 1, p. 1210.]

19-5416. Wrongful purchase or receipt. [I.C., § 19-5416, as added by 1994, ch. 377, § 1, p. 1210.]

19-5417. Liability. [I.C., § 19-5417, as added by 1994, ch. 377, § 1, p. 1210.]

19-5418. Complete defense. [I.C., § 19-5418, as added by 1994, ch. 377, § 1, p. 1210.]

19-5419. Exemptions. [I.C., § 19-5419, as added by 1994, ch. 377, § 1, p. 1210.]

CHAPTER 55

THE IDAHO DNA DATABASE ACT OF 1996

19-5501. Legislative findings — Statement of purpose. — The legislature finds that DNA (deoxyribonucleic acid) identification analysis is a useful law enforcement tool for identifying and prosecuting felony offenders. The purpose of this act is to assist federal, state and local criminal justice and law enforcement agencies within and outside the state in the detection and prosecution of individuals responsible for felony crimes, as well as in the exclusion of suspects who are being investigated for such crimes.

History.
I.C., § 19-5501, as added by 1997, ch. 120, § 1, p. 341; am 2011, ch. 211, § 1, p. 593.

Compiler's Notes. The 2011 amendment, by ch. 211, twice substituted "felony" for "sexual and violent."

The words enclosed in parentheses so appeared in the law as enacted.

Section 5 of S.L. 2011, ch. 211 provided that the act should take effect on and after July 1, 2013, except that funding to implement the provisions of the act shall take effect on and after July 1, 2012.

19-5502. Definitions. — (1) "CODIS" means the federal bureau of investigation's combined DNA index system that allows the storage and exchange of DNA records submitted by state and local forensic laboratories.

(2) "Director" means the director of the Idaho state police.

(3) "DNA" means deoxyribonucleic acid.

(4) "DNA analysis" means the scientific test of a DNA sample for the purpose of obtaining a DNA profile.

(5) "DNA profile" means the list of one (1) or more genetic types determined for an individual based on variations in DNA sequence.

(6) "DNA record" means DNA information stored in the statewide DNA database system of the bureau of forensic services or CODIS and includes information commonly referred to as a DNA profile.

(7) "DNA sample" means a body fluid or tissue sample provided by any person convicted of a felony crime or any body fluid or tissue sample submitted to the statewide DNA database system for analysis pursuant to a criminal investigation or missing person investigation.

(8) "Forensic laboratory" means the bureau of forensic services of the Idaho state police.

(9) "Law enforcement purpose" means to assist federal, state or local criminal justice and law enforcement agencies within and outside the state of Idaho in identification or prosecution of felony crimes or other crimes and the identification and location of missing and unidentified persons.

(10) "Statewide DNA databank" means the state repository of DNA samples collected under this chapter.

(11) "Statewide DNA database system" means the DNA record system administered by the Idaho bureau of forensic services.

History.

I.C., § 19-5502, as added by 1997, ch. 120, § 1, p. 341; am. 2000, ch. 469, § 45, p. 1450; am. 2004, ch. 157, § 1, p. 505; am. 2011, ch. 211, § 2, p. 593.

Compiler's Notes. For this section as effective until July 1, 2013, see the bound volume.

The 2011 amendment, by ch. 211, substituted "felony crime" for "qualifying sex crime or violent crime" in subsection (7); and substituted "felony crimes" for "sex crimes, violent crimes" in subsection (9).

Section 5 of S.L. 2011, ch. 211 provided that the act should take effect on and after July 1, 2013, except that funding to implement the provisions of the act shall take effect on and after July 1, 2012.

19-5506. Scope of law — Offenders subject to sample collection — Early collection of samples — Restitution. — (1) Any person, including any juvenile tried as an adult, who is convicted of, or pleads guilty to, any felony crime, or the attempt to commit any felony crime, regardless of the form of judgment or withheld judgment, and regardless of the sentence imposed or disposition rendered, shall be required to provide to the Idaho state police, a DNA sample and a right thumbprint impression.

(2) This chapter's requirements for submission to tests and procedures for obtaining a DNA sample and thumbprint impression from the persons who are convicted of, or who plead guilty to, any felony crime or the attempt to commit any felony crime are mandatory and apply to those persons convicted of, or who plead guilty to, such felony crimes or the attempt to commit such felony crimes covered in this chapter prior to its effective date, and who, as a result of the conviction or plea, are incarcerated in a county jail facility or a penal facility or are under probation or parole supervision after the effective date of this chapter.

(3) The collection of samples and impressions specified in this chapter are required regardless of whether the person previously has supplied a DNA sample to law enforcement agencies in any other jurisdiction.

(4) The requirements of this chapter are mandatory and apply regardless of whether a court advises a person that samples and impressions must be provided to the databank and database as a condition of probation or parole.

(5) Unless the court determines that an order of restitution would be inappropriate or undesirable, it shall order any person subject to the provisions of this section to pay restitution to help offset costs incurred by law enforcement agencies for the expense of DNA analysis.

(6) The court may order such person to pay restitution for DNA analysis in an amount not to exceed five hundred dollars ($500) per DNA sample analysis, or in the aggregate not more than two thousand dollars ($2,000), regardless of whether:

(a) The source of the sample is the person, the victim or other persons of interest in the case;

(b) Results of the analysis are entered into evidence in the person's criminal case;

(c) The DNA sample was previously analyzed for another criminal case; or

(d) Restitution for that DNA sample analysis was ordered in any other criminal case.

(7) Law enforcement agencies entitled to restitution under this section include the Idaho state police, county and city law enforcement agencies, the office of the attorney general, county prosecuting attorneys and city attorneys.

(8) In the case of reimbursement for DNA analysis performed by the Idaho state police, those moneys shall be paid to the Idaho state police and deposited in the law enforcement fund. In the case of reimbursement to the office of the attorney general, those moneys shall be paid to the general fund.

(9) Persons who have been sentenced to death, or life without the possibility of parole, or to any life or indeterminate term are not exempt from the requirements of this chapter.

History.

I.C., § 19-5506, as added by 1997, ch. 120, § 1, p. 341; am. 2000, ch. 469, § 48, p. 1450; am. 2004, ch. 157, § 2, p. 505; am. 2005, ch. 327, § 1, p. 1018; am. 2011, ch. 211, § 3, p. 593; am. 2012, ch. 82, § 3, p. 234; am. 2012, ch. 269, § 6, p. 751.

Compiler's Notes. The 2011 amendment, by ch. 211, rewrote the section, revising requirements relating to offenders subject to DNA sample collection and right thumbprint impression and removing language enumerating certain crimes.

This section was amended by two 2012 acts which appear to be compatible and have been compiled together.

The 2012 amendment, by ch. 82, substituted "Introduce, convey, possess, receive, obtain or remove major contraband (section 18-2510(3), Idaho Code)" for "Possession of a controlled substance or dangerous weapon (section 18-2511, Idaho Code)" in paragraphs (a)(20) and (b)(13).

The 2012 amendment, by ch. 269, substituted "sexual exploitation of a child (section 18-1507, Idaho Code)" for "possession of sexually exploitive material for other than a commercial purpose (section 18-1507A, Idaho Code)" in paragraph (a)(15).

Section 2 of S.L. 2005, ch. 327 provided that the act should take effect on and after July 1, 2005, and shall apply only to persons who are convicted of, or plead guilty to, a crime covered by this act after July 1, 2005.

Section 5 of S.L. 2011, ch. 211 provided that the act should take effect on and after July 1, 2013, except that funding to implement the provisions of the act shall take effect on and after July 1, 2012.

Section 5 of S.L. 2012, ch. 82 declared an emergency. Approved March 20, 2012.

19-5507. Responsibility for sample collection — Timing of sample collection — Site for sample collection. — (1) A court shall order a DNA sample and thumbprint impression to be taken after conviction and before sentencing of any person upon application by the prosecuting attorney, the attorney general, or the Idaho state police upon a showing that early collection of such samples will be in the best interest of justice. The DNA samples shall be collected in accordance with procedures established by the bureau of forensic services. The director may designate a state or county correctional facility for sample collection.

(2) Any person, including any juvenile tried as an adult, who comes within the terms of this chapter, and who is granted probation or who serves an entire term of confinement in a state or county facility, or who otherwise bypasses a prison inmate reception center shall, prior to physical release from custody, be required to provide a DNA sample and thumbprint impression at a Idaho state police designated sample collection location. If the person is not incarcerated at the time of sentencing, the court shall order the person to report within ten (10) working days to the facilities designated for the collection of such specimens.

(3) The chief administrative officer of any state or local detention facility, jail or other facility shall cause a DNA sample and thumbprint impression

to be collected from the person subject to this chapter during the intake process at the facility, or immediately thereafter at another facility designated for such collection, if DNA samples previously have not been taken pursuant to this chapter.

(4) The director of the department of correction shall cause a DNA sample and thumbprint impression to be collected from any person subject to the provisions of this chapter who has been sentenced to serve a term of imprisonment in a state correctional institution and who has not had a DNA sample taken after conviction and before sentencing. The DNA sample and thumbprint impression shall be collected from the person during the intake process at the reception center designated by the director of the department of correction as soon as possible.

(5) Any person subject to the provisions of this chapter who is serving a term of imprisonment or confinement, and who did not, for any reason, provide a DNA sample or thumbprint impression for analysis by the bureau of forensic services, shall submit to such tests as soon as practicable, but in any event prior to final discharge, parole, or release from imprisonment or confinement. A person who was convicted prior to the effective date of this chapter is not exempt from these requirements.

(6) As a condition of probation or parole, any person subject to the provisions of this chapter and who has not previously provided a DNA sample and thumbprint impression, shall upon notice by a law enforcement agency or an agent of the department of correction, be required to provide a DNA sample and thumbprint impression if it has been determined that such sample and thumbprint impression are not in the possession of the bureau of forensic services. That person is required to have the sample and impression taken within ten (10) working days at the designated county or state facility.

(7) When the state accepts an offender from another state under any interstate compact, or under any other reciprocal agreement with any county, state or federal agency, or any other provision of law, whether or not the offender is confined or released, the acceptance is conditional on the offender providing a DNA sample and thumbprint impression if the offender was convicted of an offense which would qualify as a felony crime if committed in this state, or if the person was convicted of an equivalent offense in any other jurisdiction. If the offender from another state is not confined, the samples and impression required by this chapter must be provided within ten (10) working days after the offender reports to the supervising agent or within ten (10) working days of notice to the offender, whichever occurs first. The person shall report to the designated sample collection facility or facilities to have the sample and impression taken. If the offender from another state is confined, he or she shall provide the DNA sample and thumbprint impression as soon as practicable after receipt in a state or county correctional facility or other facility, and, in any event, before completion of the person's term of imprisonment, if that person is to be discharged.

(8) Any person who is convicted of or who pleads guilty to a felony offense who is released on parole, furlough or other release, and is returned to a

state or local correctional institution for a violation of a condition of that release, and that person has not previously provided a DNA sample and thumbprint impression, shall provide a sample and impression upon returning to the state correctional institution.

History.

I.C., § 19-5507, as added by 1997, ch. 120, § 1, p. 341; am. 1998, ch. 123, § 3, p. 456; am. 2000, ch. 469, § 49, p. 1450; am. 2011, ch. 211, § 4, p. 593.

Compiler's Notes. The 2011 amendment, by ch. 211, in the first sentence in subsections (4) through (6), substituted "provisions of this chapter" for "terms of this chapter"; in subsection (6), substituted "provided" for "submitted"; in the first sentence in subsection (7), substituted "felony crime" for "crime described in section 19-5506, Idaho Code"; and in subsection (8), substituted "Any person who is convicted of or who pleads guilty to a felony offense" for "Any inmate serving a term of incarceration for committing an offense listed in section 19-5506, Idaho Code" and "person" for "inmate."

Section 5 of S.L. 2011, ch. 211 provided that the act should take effect on and after July 1, 2013, except that funding to implement the provisions of the act shall take effect on and after July 1, 2012.

CHAPTER 56

IDAHO DRUG COURT AND MENTAL HEALTH COURT ACT

SECTION.

19-5601. Short title. — This chapter shall be known and may be cited as the "Idaho Drug Court and Mental Health Court Act."

History.

I.C., § 19-5601, as added by 2001, ch. 337, § 1, p. 1196; am. 2005, ch. 358, § 2, p. 1130.

Compiler's Notes. Section 3 of S.L. 2005, ch. 358 is compiled as § 19-5602.

Due Process.

Defendant who pleaded guilty in order to participate in a drug court program had a liberty interest in remaining in the program, and, therefore, defendant was entitled to the restricted due process protection in *Morrissey v. Brewer*, 408 U.S. 471 (1972), before being terminated from the program. State v. Rogers, 144 Idaho 738, 170 P.3d 881 (2007).

19-5602. Statement of policy. — The legislature finds that:

(1) Substance abuse is a contributing cause for much of the crime in Idaho, costs millions of dollars in productivity, contributes to the ever increasing jail and prison populations and adversely impacts Idaho children;

(2) Drug courts which closely supervise, monitor, test and treat substance abusers have proven effective in certain judicial districts in Idaho and in other states in reducing the incidence of drug use, drug addiction, and crimes committed as a result of drug use and drug addiction. Successful drug courts are based on partnerships among the courts, law enforcement, corrections and social welfare agencies;

(3) Mental illness is a substantial contributing cause to crime in Idaho.

Crimes committed by persons suffering from mental illness cause substantial losses to persons and business throughout the state and endanger public safety. In addition, millions of dollars are spent each year on the incarceration, supervision and treatment of mentally ill offenders;

(4) Mental health courts in Idaho and other jurisdictions that closely supervise and monitor mentally ill adult and juvenile offenders and oversee their treatment are an innovative alternative to incarceration for certain offenders. Such courts, which can be operated in conjunction with drug courts, have provided a cost-effective approach to addressing the mental health needs of offenders, reducing recidivism, providing community protection, easing the caseload of the courts, and alleviating the problem of increasing prison, jail and detention populations; and

(5) It is in the best interests of the citizens of this state to expand the use of drug courts and mental health courts in Idaho.

The goals of the drug courts and mental health courts created by this chapter are to reduce the overcrowding of jails and prisons, to reduce alcohol and drug abuse and dependency among criminal and juvenile offenders, to hold offenders accountable, to reduce recidivism, and to promote effective interaction and use of resources among the courts, justice system personnel and community agencies.

History.
I.C., § 19-5602, as added by 2001, ch. 337, § 1, p. 1196; am. 2005, ch. 358, § 3, p. 1130.

Compiler's Notes. Sections 2 and 4 of S.L. 2005, ch. 358 are compiled as §§ 19-5601 and 19-5603, respectively.

19-5603. Drug court — Establishment. — The district court in each county may establish a drug court which shall include a regimen of graduated sanctions and rewards, substance abuse treatment, close court monitoring and supervision of progress, educational or vocational counseling as appropriate, and other requirements as may be established by the district court, in accordance with standards developed by the Idaho supreme court drug court and mental health court coordinating committee.

History.
I.C., § 19-5603, as added by 2001, ch. 337, § 1, p. 1196; am. 2005, ch. 358, § 4, p. 1130.

Compiler's Notes. Sections 3 and 5 of S.L. 2005, ch. 358 are compiled as §§ 19-5602 and 19-5606, respectively.

19-5604. Eligibility. — (1) No person has a right to be admitted into drug court. The drug court in each county shall determine the eligibility of persons who may be admitted into drug court except that each candidate, prior to being admitted, must undergo: (a) a substance abuse assessment; and (b) a criminogenic risk assessment.

(2) No person shall be eligible to participate in drug court if any of the following apply:

(a) The person is currently charged with, has pled or has been adjudicated or found guilty of, a felony crime of violence or a felony crime in which the person used either a firearm or a deadly weapon or instrument.

(b) The person is currently charged with, or has pled or been found guilty of, a felony in which the person committed, attempted to commit, conspired to commit, or intended to commit a sex offense.

(3) A drug court may, after consultation with the drug court team and with the consent of the prosecuting attorney, allow a person to participate in drug court who would otherwise be ineligible only because of the provisions of subsection (2)(a) of this section.

History.
I.C., § 19-5604, as added by 2001, ch. 337, § 1, p. 1196; am. 2011, ch. 186, § 1, p. 536.

Compiler's Notes. The 2011 amendment, by ch. 186, added the subsection (1) and (2) designations; redesignated former subsections (1) and (2) as paragraphs (1)(a) and (1)(b), respectively; and added subsection (3).

19-5606. Implementation of drug courts and mental health courts. — The supreme court shall establish a drug court and mental health court coordinating committee consisting of judges, court administrators, drug court coordinators, mental health court coordinators, prosecuting attorneys, public defenders, state and county probation officers, treatment providers, representatives of the department of correction, the department of education, the commission of pardons and parole, the department of health and welfare, the department of juvenile corrections, the Idaho state police, the Idaho transportation department, legislators, a representative of the governor's office, law enforcement officers, mental health professionals, and others, which shall establish a drug court and mental health court implementation plan and oversee ongoing drug court and mental health court programs. The implementation plan shall include a strategy to forge partnerships among drug courts, mental health courts, public agencies, and community-based organizations to enhance drug court and mental health court effectiveness. The committee shall also develop guidelines for drug courts and mental health courts addressing eligibility, identification and screening, assessment, treatment and treatment providers, case management and supervision, and evaluation. The coordinating committee shall also solicit specific drug court and mental health court plans, and recommend funding priorities and decisions per judicial district; pursue all available alternate funding; provide technical assistance, develop procedural manuals, and schedule training opportunities for the drug court and mental health court teams; design an evaluation strategy, including participation in the statewide substance abuse evaluation plan; and design an automated drug court and mental health court management information system, which promotes information sharing with other entities.

History.
I.C., § 19-5606, as added by 2001, ch. 337, § 1, p. 1196; am. 2005, ch. 358, § 5, p. 1130.

Compiler's Notes. Sections 4 and 6 of S.L. 2005, ch. 358 are compiled as §§ 19-5603 and 19-5607, respectively.

19-5607. Drug court and mental health court funding. — Subject to the appropriation power of the legislature, the supreme court shall be responsible for administering, allocating and apportioning all appropriations from the legislature for drug courts and mental health courts.

History.
I.C., § 19-5607, as added by 2001, ch. 337, § 1, p. 1196; am. 2005, ch. 358, § 6, p. 1130.

Compiler's Notes. Sections 5 and 7 of S.L. 2005, ch. 358 are compiled as §§ 19-5606 and 19-5608, respectively.

19-5608. Drug court and mental health court fee. — Each person admitted into a drug court or mental health court shall pay the drug court and mental health court fee as established in section 31-3201E, Idaho Code.

History.
I.C., § 19-5608, as added by 2004, ch. 249, § 2, p. 714; am. 2005, ch. 358, § 7, p. 1130.

Compiler's Notes. Sections 6 and 8 of S.L. 2005, ch. 358 are compiled as §§ 19-5607 and 19-5609, respectively.

19-5609. Mental health courts. — (1) The district court in each county may establish a mental health court which shall include a regimen of graduated sanctions and rewards, mental health and other appropriate treatment, close court monitoring and supervision of progress, educational or vocational counseling as appropriate, eligibility standards and other requirements as may be established by the district court, in accordance with standards developed by the Idaho supreme court drug court and mental health court coordinating committee. No person has a right to be admitted into a mental health court. A mental health court may be operated in conjunction with a drug court.

(2) The district court of each county that has implemented a mental health court shall annually evaluate the mental health court's effectiveness and provide a report to the supreme court as requested. If the mental health court is operated in conjunction with a drug court, a single report may be submitted for the drug court and mental health court. A report evaluating the effectiveness of mental health courts in the state shall be submitted to the governor and to the legislature by the first day of the legislative session each year.

History.
I.C., § 19-5609, as added by 2005, ch. 358, § 8, p. 1130.

Compiler's Notes. Sections 7 and 9 of S.L. 2005, ch. 358 are compiled as §§ 19-5608 and 31-3201E, respectively.

CHAPTER 57

ADDRESS CONFIDENTIALITY FOR VICTIMS OF VIOLENCE

SECTION.

19-5701. Purpose. — The legislature finds that persons attempting to escape from actual or threatened domestic violence, sexual assault or malicious harassment frequently establish new addresses in order to prevent their assailants or probable assailants from finding them. The purpose of this chapter is to enable state and local agencies to respond to requests for public records without disclosing the location of a victim of domestic violence, sexual assault or stalking, to enable interagency cooperation with the secretary of state in providing address confidentiality for

victims of domestic violence, sexual assault or stalking, and to enable state and local agencies to accept a program participant's use of an address designated by the secretary of state as a substitute mailing address.

History.
I.C., § 19-5701, as added by 2008, ch. 232, § 1, p. 703.

19-5702. Definitions. — Unless the context clearly requires otherwise, for purposes of this chapter the following terms have the following meanings:

(1) "Address" means a residential street address of an individual as specified on the individual's application to be a program participant under this chapter.

(2) "Program participant" means:

(a) An individual who has obtained an order of protection pursuant to section 39-6306, Idaho Code, after a hearing for which the defendant in the proceeding received notice; or

(b) An individual who has obtained a certification from a prosecutor stating that the individual is the victim of a crime in which the defendant has been charged pursuant to section 18-918, 18-1506, 18-1508, 18-1508A, 18-6101, 18-7902, 18-7905 or 18-7906, Idaho Code, or in which the defendant is charged with attempt to commit any of the foregoing crimes.

History.
I.C., § 19-5702, as added by 2008, ch. 232, § 1, p. 704.

19-5703. Address confidentiality program — Application — Certification. — (1) An adult person, a parent or a guardian acting on behalf of a minor, or a guardian appointed pursuant to section 15-5-304, Idaho Code, acting on behalf of an incapacitated person, may apply to the secretary of state to have an address designated by the secretary of state serve as the person's address or the address of the minor or incapacitated person. The secretary of state shall approve an application if it is filed in the manner and on the form prescribed by the secretary of state and if it contains:

(a) A sworn statement by the applicant that the applicant has good reason to believe:

(i) That the applicant, or the minor or incapacitated person on whose behalf the application is made, is a victim of domestic violence, stalking, rape or malicious harassment, or any other crime listed in section 19-5702(2)(b), Idaho Code; and

(ii) That the applicant fears for his or her safety or his or her children's safety, or the safety of the minor or incapacitated person on whose behalf the application is made.

(b) A certified copy of a domestic protection order issued pursuant to section 39-6306, Idaho Code, or a certified statement from a prosecutor stating that the individual is a victim of crime as provided in subsection (2)(b) of section 19-5702, Idaho Code.

(c) A designation of the secretary of state as agent for purposes of service of process and for the purpose of receipt of mail.

(d) The mailing address where the applicant can be contacted by the secretary of state, and the telephone number or numbers where the applicant can be called by the secretary of state.

(e) The address or addresses that the applicant requests not be disclosed.

(2) Applications shall be filed with the office of the secretary of state.

(3) Upon filing a properly completed application, the secretary of state shall certify the applicant as a program participant. Applicants shall be certified for four (4) years following the date of filing unless the certification is withdrawn or invalidated before that date. The application may be renewed at the end of four (4) years.

(4) A person who falsely attests in an application that disclosure of the applicant's address would endanger the applicant's safety or the safety of the applicant's children, or the minor or incapacitated person on whose behalf the application is made, or who knowingly provides false or incorrect information upon making an application, shall be punishable under section 18-5414, Idaho Code, or other applicable statutes.

History.
I.C., § 19-5703, as added by 2008, ch. 232, § 1, p. 704.

19-5704. Certification cancellation. — (1) The secretary of state may cancel a program participant's certification if there is a change in the name or residential address from that listed on the application, unless the program participant provides the secretary of state with seven (7) days' prior notice of the change of name or address.

(2) The secretary of state may cancel certification of a program participant if mail forwarded by the secretary to the program participant's address is returned as nondeliverable.

(3) The secretary of state may cancel certification of a program participant who applies using false information.

History.
I.C., § 19-5704, as added by 2008, ch. 232, § 1, p. 705.

19-5705. Use of designated address. — (1) A program participant may request that state and local agencies use the address designated by the secretary of state as his or her address. When creating a new public record, state and local agencies shall accept the address designated by the secretary of state as a program participant's substitute address, unless the agency shows that:

(a) The agency has a bona fide statutory or administrative requirement for the use of a program participant's address which would otherwise be confidential under this chapter;

(b) The program participant's address will be used only for those statutory and administrative purposes; and

(c) The agency takes reasonable precautions to protect the confidentiality of the program participant.

(2) A program participant may use the address designated by the secretary of state as his or her work address.

(3) The office of the secretary of state shall forward all first class mail to the appropriate program participant.

History.
I.C., § 19-5705, as added by 2008, ch. 232, § 1, p. 705.

19-5706. Disclosure of records prohibited — Exceptions. — Notwithstanding any other provision of state law, the secretary of state shall not make any records in a program participant's file available for inspection or copying, other than the address designated by the secretary of state, except under the following circumstances:

(1) If requested by a law enforcement agency, to the law enforcement agency; or

(2) If directed by a court order, to a person identified in the order.

History.
I.C., § 19-5706, as added by 2008, ch. 232, § 1, p. 705.

19-5707. Immunity from liability. — Neither a governmental entity nor its employees, while acting within the course and scope of their employment and without malice or criminal intent, shall be liable under the Idaho tort claims act, chapter 9, title 6, Idaho Code, for any injury resulting from the release of confidential information under this act.

History.
I.C., § 19-5707, as added by 2008, ch. 232, § 1, p. 705.

19-5708. Adoption of rules. — The secretary of state may adopt rules to facilitate the administration of this chapter by state and local agencies.

History.
I.C., § 19-5708, as added by 2008, ch. 232, § 1, p. 705.

CHAPTER 58

ADDRESS CONFIDENTIALITY FOR LAW ENFORCEMENT OFFICERS

SECTION.

19-5801. Definitions. — As used in this chapter:

(1) "Alternative Idaho mailing address" means the address of a law enforcement officer's employing entity.

(2) "Application" means a written form prescribed and made available by the Idaho peace officer standards and training council. Such application shall contain, at minimum, all of the following:

(a) A sworn statement by the law enforcement officer's employing entity that the applicant is in fact a law enforcement officer as defined in subsection (6) of this section;

(b) A sworn statement by the law enforcement officer that names such officer's residing household member(s), if any, as defined in subsection (11) of this section;

(c) The alternative Idaho mailing address as defined in subsection (1) of this section, and the telephone number or numbers where the law enforcement officer and such officer's residing household member(s) can be contacted by the public agency; and

(d) A sworn statement by the law enforcement officer that such officer knowingly and voluntarily designates his or her employing entity as agent for purposes of service of process and receipt of first class, certified or registered mail.

(3) "County detention officer" means an employee in a county jail who is responsible for the safety, care, protection and monitoring of county jail inmates.

(4) "Custodian" as defined in section 9-337, Idaho Code.

(5) "Federal officer" means a special agent or law enforcement officer who is a resident as defined in section 51-102, Idaho Code, employed by a federal agency and who is empowered to effect an arrest with or without a warrant for violations of the United States Code and who is authorized to carry firearms in the performance of duty.

(6) "Law enforcement officer" means any current federal officer, peace officer, parole officer, probation officer, correctional officer, county detention officer and any person who prosecutes criminal cases. The term "law enforcement officer" shall not include a person who holds an elected office.

(7) "Parole officer" means an employee of the Idaho department of correction who is charged with or whose duties include supervision of parolees.

(8) "Peace officer" means any employee of a police or law enforcement agency which is a part of or administered by the state or any political subdivision thereof and whose duties include and primarily consist of the prevention and detection of crime and the enforcement of penal, traffic or highway laws of this state or any political subdivision. "Peace officer" also means an employee of a police or law enforcement agency of a federally recognized Indian tribe who has satisfactorily completed the peace officer standards and training academy and has been deputized by a sheriff of a county or a chief of police of a city of the state of Idaho.

(9) "Probation officer" means an employee of the Idaho department of correction or of the Idaho department of juvenile corrections who is charged with or whose duties include supervision of probationers.

(10) "Public agency" as is defined in section 9-337, Idaho Code.

(11) "Residing household member(s)" means a law enforcement officer's spouse and any child or children who currently reside at the same residential street address as such officer.

History.
I.C., § 19-5801, as added by 2010, ch. 225, § 2, p. 501.

Compiler's Notes. Section 8 of S.L. 2010, ch. 225 provided that the act should take effect on and after January 1, 2011.

Cross Reference. Department of correction, § 20-201.

Department of juvenile corrections, § 20-503.

19-5802. Disclosure of residential street address and telephone number prohibited — Exceptions. — Notwithstanding any other provision of state law, a public agency shall not disclose to any person or entity the Idaho residential street address and telephone number of a law enforcement officer and such officer's residing household member(s) upon submission of an application and fee consistent with the provisions of section 19-5803, Idaho Code, except under any of the following circumstances:

(1) If directed by a court order, to a person identified in the court order;

(2) If requested by a law enforcement agency, to the law enforcement agency;

(3) If requested by a financial institution or title company for business purposes, to the requesting financial institution or title company; or

(4) If the law enforcement officer provides written permission for disclosure of such information.

History.
I.C., § 19-5802, as added by 2010, ch. 225, § 2, p. 501.

Compiler's Notes. Section 8 of S.L. 2010, ch. 225 provided that the act should take effect on and after January 1, 2011.

19-5803. Address confidentiality — Eligibility. — (1) Law enforcement officers desiring that their Idaho residential street address and telephone number, and the Idaho residential street address and telephone number of their residing household member(s) be exempt from disclosure pursuant to this chapter and section 9-340C(30), Idaho Code, may submit an application and a fee, if any, to the custodian of the public record that contains such information. Upon receipt of an application and fee, the public agency shall comply with the provisions of this chapter for a period of four (4) years. Thereafter, law enforcement officers may renew the exemption by submitting a new application and fee, if any. The public agency may establish a fee schedule not to exceed the actual cost to the agency of complying with the provisions of this chapter.

(2) Law enforcement officers may submit an application to a public agency requesting that the public agency use an alternative Idaho mailing address rather than the Idaho residential street address of any such officer and of any such officer's residing household member(s) on all applications and on all identification cards, licenses, certificates, permits, tags and other similar documents that are issued to the officer or to such officer's residing

household member(s) by the public agency. A public agency receiving such application shall comply with the request.

(3) A person shall cease to be eligible for an exemption under this chapter if such person ceases to be a law enforcement officer or a residing household member(s). Within thirty (30) days of such cessation, the person shall notify, in writing, every public agency to which the person has made an application stating that he or she is no longer eligible for such exemption. If a law enforcement officer changes employment but is still eligible for an exemption under this chapter, such law enforcement officer shall, within thirty (30) days of changing employment, submit a new application to every public agency to which such officer has made an application.

(4) Nothing in this chapter shall prevent a public agency from obtaining the residential street address and telephone number of a law enforcement officer and of any residing household member(s). A law enforcement officer who has submitted an application pursuant to the provisions of this chapter shall provide his or her current Idaho residential street address to his or her employing entity.

History.
I.C., § 19-5803, as added by 2010, ch. 225, § 2, p. 501; am. 2011, ch. 151, § 9, p. 414.

Compiler's Notes. Section 8 of S.L. 2010, ch. 225 provided that the act should take effect on and after January 1, 2011.

The 2011 amendment, by ch. 151, updated the section reference in subsection (1).

19-5804. Immunity from liability. — Neither a public agency nor its employees, while acting within the course and scope of their employment and without malice or criminal intent, shall be liable under the Idaho tort claims act, chapter 9, title 6, Idaho Code, for any injury resulting from the release of confidential information under this chapter.

History.
I.C., § 19-5804, as added by 2010, ch. 225, § 2, p. 501.

Compiler's Notes. Section 8 of S.L. 2010, ch. 225 provided that the act should take effect on and after January 1, 2011.

TITLE 20

STATE PRISON AND COUNTY JAILS

CHAPTER 1

STATE PENITENTIARY

20-101A. Good conduct reduction of sentences.

Analysis

Sentence.
—Proper.

Sentence.

—Proper.

Where habeas petitioner claimed that he was not being provided an appropriate calculation of his good time credits, petitioner's argument that he was being given insufficient good time credit was based upon a false assumption that 10 days per month was equivalent to one-third of the sentence; because not every month had 30 days, 10 days per month did not equate to one-third of the sentence, the good time credit allowed was 120 days per year, not one-third of 365 or 366 days. Lake v. Newcomb, 140 Idaho 190, 90 P.3d 1272 (Ct. App. 2004).

20-111. Prisoners in state penitentiary — Justifiable killing or wounding. — If any prisoner threatens personal injury to any officer, keeper or guard of the state penitentiary or other place maintained by the state board of correction, or acts in such manner as may reasonably lead the officer, keeper or guard to believe his life or the life of any prisoner is in danger, or which leads the officer, keeper or guard, to believe the prisoner is attempting escape, then such officer, keeper or guard, may proceed forthwith to use any weapon he may have to enforce obedience, and if in so doing any prisoner shall be necessarily wounded or killed, the officer, keeper or guard is justified and shall be held guiltless. For purposes of this section, a facility operated by a private prison contractor and housing prisoners pursuant to a contract between the contractor and the state board of correction, as set forth in section 20-241A, Idaho Code, shall be deemed to be maintained by or under the control of the state board of correction.

History.

1949, ch. 143, § 1, p. 251; am. 2010, ch. 351, § 1, p. 915.

Compiler's Notes. The 2010 amendment, by ch. 351, throughout the section, substituted "prisoner" for "convict"; in the first sentence,

inserted "or other place maintained by the state board of correction"; and added the last sentence.

Section 4 of S.L. 2010, ch. 351 declared an emergency and applied to contracts entered into or renewed on and after its passage and approval. Approved April 12, 2010.

CHAPTER 2

STATE BOARD OF CORRECTION

20-201. Department of correction created.

Cited in: State v. Moore, 150 Idaho 17, 244 P.3d 161 (2010).

20-208. Salaries and expenses of board members. — Each member of the state board of correction shall be compensated as provided by section 59-509(q), Idaho Code.

History.

1947, ch. 53, § 8, p. 59; am. 1951, ch. 217, § 1, p. 448; am. 1969, ch. 97, § 4, p. 329; am. 1980, ch. 247, § 5, p. 582; am. 2008, ch. 80, § 1, p. 208.

Compiler's Notes. The 2008 amendment, by ch. 80, substituted "59-509(q)" for "59-509(h)".

20-209. Control and management of correctional facilities and prisoners — Rehabilitative services — Rules. — (1) The state board of correction shall have the control, direction and management of such correctional facilities as may be acquired for use by the state board of correction and all property owned or used in connection therewith, and shall provide for the care, maintenance and employment of all prisoners now or hereinafter committed to its custody.

(2) The state board of correction may provide or facilitate research-based rehabilitative services at the discretion of the Idaho department of correction and as resources permit for incarcerated and community-based offenders. The rehabilitative services may include programs for behavioral modification, education, vocational education, sexual offenders, substance

abuse, gender responsive programs and other programs that correctional research supports reduction of risk for offender populations. Nothing contained in this subsection shall create any right to rehabilitative services.

(3) The state board of correction shall have the authority to enter into contracts with private prison contractors for the site selection, design, design/building, acquisition, construction, construction management, maintenance, leasing, leasing/purchasing, management or operation of private prison facilities or any combination of those services subject to the requirements and limitations set forth in section 20-241A, Idaho Code.

(4) The state board of correction shall have the authority to promulgate rules required by law or necessary or desirable to carry out all duties assigned to the department of correction pursuant to the provisions of chapter 8, title 20, Idaho Code, which authority shall include the power and duties to prescribe standards, rules and procedures for licensure of private prison contractors, to develop and provide, in conjunction with the department of administration, a uniform contract for use by local contracting authorities in contracting with private prison contractors, to review records and historical information of all prisoners proposed to be housed in private prison facilities and to approve or reject the housing of all prisoners, to monitor the status of insurance of private prison contractors, to approve suitable training programs for firearm certification for employees of private prison contractors and to approve suitable drug testing programs for prisoners housed with private prison contractors. All final decisions by the board shall be subject to review pursuant to the provisions and procedures of the administrative procedure act, chapter 52, title 67, Idaho Code.

(5) The state board of correction is authorized to provide medical and counseling services to those prisoners who have been exposed to the HIV (human immunodeficiency virus) which causes acquired immunodeficiency syndrome (AIDS) or who have been diagnosed as having contracted a human immunodeficiency viral disease.

(6) The state board of correction should provide educational and informational services to prisoners housed in Idaho and to its department employees in order to assure that the transmission of HIV within correctional facilities is diminished.

History.

1947, ch. 53, § 9, p. 59; am. 1970, ch. 143, § 6, p. 425; am. 1988, ch. 110, § 1, p. 199; am. 1997, ch. 223, § 1, p. 655; am. 2001, ch. 335, § 12, p. 1177; am. 2011, ch. 29, § 1, p. 71.

Compiler's Notes. The 2011 amendment, by ch. 29, inserted "Rehabilitative services" in the section heading, added subsection (2) and redesignated former subsections (2) to (5) as subsections (3) to (6).

A.L.R. Constitutional right of prisoners to abortion services and facilities. 28 A.L.R.6th 485.

20-209B. Duty to control disturbances at state penitentiary. — It shall be the primary duty of the state director of correction, or his designee, to prevent, control and suppress all riots, escapes, affrays and insurrections at the state penitentiary or other place maintained by the state board of correction which come to his knowledge, and to control and suppress all attempts to riot or escape.

The director of correction, or his designee, shall be primarily responsible

for all security measures to be taken at the time of any riot, escape, affray or insurrection, or attempts to commit the same, at the state penitentiary or other place under the control of the state board of correction.

Any county sheriff, deputy sheriff or any person so acting, and all other law enforcement officers, shall be subject to the authority herein conferred upon the director of correction, or his designee, and shall be subject to his direction and control during any riots, escapes, affrays, insurrections, or attempts to commit the same, at the state penitentiary or other place maintained by the state board of correction.

Nothing in this act shall preclude the use of any county sheriff or other law enforcement officers by the director of correction during any such existing emergency. If at any such time the director of correction shall find need for the assistance of any county sheriff or other law enforcement officers, the sheriff and such other officers may respond and render assistance at the direction of the director of correction.

For purposes of this section, a facility operated by a private prison contractor and housing prisoners pursuant to a contract between the contractor and the state board of correction, as set forth in section 20-241A, Idaho Code, shall be deemed to be maintained by or under the control of the state board of correction.

History.
I.C., § 20-209B, as added by 1973, ch. 169, § 1, p. 358; am. 2010, ch. 351, § 2, p. 915.

Compiler's Notes. The 2010 amendment, by ch. 351, added the last paragraph.

The term "this act" in the fourth paragraph refers to S.L. 1973, ch. 169, which is codified only as this section.

Section 4 of S.L. 2010, ch. 351 declared an emergency and applied to contracts entered into or renewed on and after its passage and approval. Approved April 12, 2010.

20-209C. Authority to designate employees as peace officers. — All employees of the state board of correction who receive peace officer certification from the Idaho peace officer standards and training council shall have the authority given by statute to peace officers of the state of Idaho in accordance with the provisions of section 19-5109, Idaho Code. The state board of correction shall have the additional authority to designate other employees to act as peace officers when engaged in transportation of prisoners or apprehension of prisoners or wards who have escaped, or apprehension and arrest of persons who are suspected of having violated the terms and conditions of their probation or parole, or when present with and at the request of a local, state or federal law enforcement officer.

History.
I.C., § 20-209B, as added by 1973, ch. 170, § 2, p. 359; am. and renumbered, 1979, ch. 205, § 1, p. 588; am. 1980, ch. 99, § 1, p. 219; am. 2005, ch. 131, § 3, p. 417; am. 2011, ch. 28, § 2, p. 70.

Compiler's Notes. Section 2 of S.L. 2005, ch. 131 is compiled as § 19-5109.

The 2011 amendment, by ch. 28, deleted "classified" following "designate other" near the middle of the second sentence, and inserted "or when present with and at the request of a local, state or federal law enforcement officer" at the end of the first sentence.

20-209G. Authority to investigate and issue subpoenas. — (1) For purposes of this section, the following definitions shall apply:

(a) "Correctional facility" means any prison, correctional facility or mental health facility operated by the department of correction and any public or private correctional facility in which department of correction prisoners are housed pursuant to contract, including a county jail;

(b) "Department of correction prisoner" means any person housed in a correctional facility who has been committed to the custody of or who is under the supervision of the department of correction by way of a judgment of conviction or court order, including the following:

(i) Prisoners committed to the department to serve criminal sentences;

(ii) Persons committed in relation to their fitness to proceed at trial pursuant to section 18-212, Idaho Code;

(iii) Prisoners over whom a court has retained jurisdiction pursuant to section 19-2601 4., Idaho Code;

(iv) Prisoners serving discretionary jail time as probationers or parolees;

(v) Parolees arrested pursuant to sections 20-227 and 20-228, Idaho Code, and are awaiting a determination regarding violation or revocation of their parole;

(vi) Civil commitments pursuant to section 66-329, Idaho Code; and

(vii) Persons committed to the Idaho security medical program pursuant to section 66-1301, Idaho Code.

(c) "Documents" means any writings, charts, records, recordings, electronic records or data, photographs, tangible things, drawings or diagrams of any sort whatsoever.

(2) In furtherance of the duties set forth in this chapter and department of correction rules, the director of correction shall have the authority to:

(a) Investigate crimes, criminal enterprises or conspiracies, violations of state law or administrative regulations, disturbances, riots and the introduction of contraband into a correctional facility, where such activities involve department of correction prisoners;

(b) Investigate waste, mismanagement of state resources and violations of laws, regulations, policies, directives or procedures by employees of the department of correction; and

(c) Issue subpoenas for the production of documents which may be relevant to such investigations.

(3) If a custodian of documents refuses to produce any document required by a subpoena issued pursuant to subsection (2) of this section, the director of correction may petition the district court in the county in which the custodian resides or does business, setting forth by way of sworn affidavit the reasons supporting issuance of the subpoena and why the documents sought are necessary for the investigation, that due notice has been given of the time and place of production of said documents, that the custodian has been properly summoned and that the custodian has failed and refused to produce documents required by the subpoena and may request an order compelling the custodian to produce the documents.

(4) Upon the filing of such petition and affidavit, the court shall enter an order directing the custodian of documents to appear before the court at a time fixed by the court, but not more than ten (10) court days from the date

of the order, and to show cause why the custodian has not produced the documents and why he should not be required to produce the documents. The court shall serve a copy of the order upon the custodian. If it appears to the court that the petition is adequately supported by affidavit, the subpoena was regularly issued by the director of correction and regularly served upon the custodian, and that there is not good cause for the custodian's failure to produce the documents, the court shall order the custodian to produce the required documents at a time and place fixed by the court. If the custodian fails to obey the court's order, he shall be dealt with for contempt of court.

(5) When documents are sought from a custodian who is not a resident of this state or who has his principal place of business in another state, the director of correction is authorized to obtain subpoenas issued by the clerk of the district court of Ada county. The clerk of the district court shall open a court file, provide a case number and issue the subpoena under the seal of the court. The subpoena shall specify those documents required to be produced.

(6) The department of correction shall cooperate with local law enforcement and other local, state or federal law enforcement agencies during the conduct of any investigation arising out of the powers and duties set forth in this section.

History.
I.C., § 20-209G, as added by 2009, ch. 45, § 1, p. 126.

20-210. Commission of pardons and parole — Appointment — Qualifications — Terms — Salary — Staff. — The governor shall appoint a state commission of pardons and parole, each member of which shall be subject to the advice and consent of the senate, in this chapter referred to as the commission, which shall succeed to and have all rights, powers and authority of said board of pardons as are granted and provided by the provisions of the constitution of the state of Idaho.

The commission shall be composed of five (5) members. The members shall serve at the pleasure of the governor and not more than three (3) members shall be from any one (1) political party.

The members of the commission shall be appointed for the purposes of organization as follows: Members on the commission on the effective date of this act, shall serve out the remainder of their terms; thereafter, as members' terms expire, the governor shall reappoint them or appoint new members to serve terms of three (3) years; vacancies in the commission for unexpired terms shall be by appointment by the governor for the remainder of the term and all appointees may be reappointed.

The commission and the board may meet as necessary to exchange such information to enable each to effectively carry out their respective duties.

The commission shall meet at such times and places as determined to be necessary and convenient, or at the call of the executive director and in any event no less than quarterly.

The members shall be compensated as provided by section 59-509(i),

Idaho Code, when attending quarterly meetings conducted at a date and time separate from a hearing session or other meetings approved by the executive director. The members shall receive compensation of two hundred dollars ($200) per member per day when conducting parole, commutation, pardon, revocation or other hearings, and shall be reimbursed for actual and necessary expenses subject to the limitations provided in section 67-2008, Idaho Code.

The governor will liberally allow the reasonable payment for services of such technical and professional advice and consultation as the commission may require. The governor shall appoint the executive director for the commission. The executive director shall be the full-time employee who shall report to, serve at the pleasure of, and be compensated as determined by the governor. The executive director shall be the official representative for the commission, shall be responsible for the managing and administration of daily commission business and shall schedule hearing sessions at times convenient to the members of the commission. For each scheduled session, the executive director shall designate one (1) of the members of the commission as the presiding officer for conducting the hearings. The executive director may hire such staff and employees as are approved by the governor. The executive director shall also have such other duties and responsibilities as the governor shall assign.

History.
1947, ch. 53, § 10, p. 59; am. 1969, ch. 97, § 5, p. 329; am. 1974, ch. 6, § 2, p. 28; am. 1980, ch. 247, § 6, p. 582; am. 1991, ch. 166, § 1, p. 406; am. 1994, ch. 171, § 1, p. 382; am. 1998, ch. 355, § 1, p. 1112; am. 1999, ch. 311, § 1, p. 772; am. 2007, ch. 102, § 1, p. 306.

Compiler's Notes. The 2007 amendment, by ch. 102, substituted "two hundred dollars ($200)" for "one hundred fifty dollars ($150)" in the sixth paragraph.

20-213A. Compliance with open meeting law — Executive sessions authorized — Report required.

Cited in: Leavitt v. Craven, — Idaho —, — P.3d —, 2012 Ida. LEXIS 141 (June 8, 2012).

20-216. Board — Powers and duties — Records, reports and statistics.

Cited in: Mattoon v. Blades, 145 Idaho 634, 181 P.3d 1242 (2008).

20-219. Probation and parole supervision. — (1) The state board of correction shall be charged with the duty of supervising all persons convicted of a felony placed on probation or released from the state penitentiary on parole, and all persons convicted of a felony released on parole or probation from other states and residing in the state of Idaho; of making such investigations as may be necessary; of reporting alleged violations of parole or probation in specific cases to the commission or the courts to aid in determining whether the parole or probation should be continued or revoked and of preparing a case history record of the prisoners

to assist the commission or the courts in determining if they should be paroled or should be released on probation.

(2) Any person placed on probation or parole and who has been designated as a violent sexual predator pursuant to chapter 83, title 18, Idaho Code, shall be monitored with electronic monitoring technology for the duration of the person's probation or parole period. Any person who, without authority, intentionally alters, tampers with, damages, or destroys any electronic monitoring equipment shall be guilty of a felony.

History.

1947, ch. 53, § 19, p. 59; am. 1980, ch. 297, § 4, p. 768; am. 1993, ch. 101, § 2, p. 254; am. 2008, ch. 65, § 1, p. 168.

Compiler's Notes. The 2008 amendment, by ch. 65, added the subsection (1) designation to existing provision and added subsection (2).

Cited in: Mattoon v. Blades, 145 Idaho 634, 181 P.3d 1242 (2008).

Warrantless Search.

Where defendant had signed consent to search form as condition of probation, had probation revoked, and then reinstated without signing consent form, he was deemed not to have consented to warrantless search by probation officer. However, even without consent, the search was not in violation of defendant's rights, as his expectation of privacy was reduced as a probationer, and as long as there were reasonable grounds, probation officer was justified in conducting warrantless search. State v. Klingler, 143 Idaho 494, 148 P.3d 1240 (2006).

20-221. Modification of conditions of probation or suspension of sentence.

Cited in: State v. Klingler, 143 Idaho 494, 148 P.3d 1240 (2006).

20-222. Indeterminate or fixed period of probation or suspension of sentence — Rearrest and revocation.

Cited in: State v. Doe (In re Doe), 147 Idaho 326, 208 P.3d 730 (2009).

Analysis

Consent to search.
Retention of jurisdiction.
Revocation hearing.
Revocation of probation.
—Proper.
Suspended sentence.

Consent to Search.

Where defendant had signed consent to search form as condition of probation, had probation revoked, and then reinstated without signing consent form, he was deemed not to have consented to warrantless search by probation officer. However, even without consent, the search was not in violation of defendant's rights, as his expectation of privacy was reduced as a probationer, and as long as there were reasonable grounds, probation officer was justified in conducting warrantless search. State v. Klingler, 143 Idaho 494, 148 P.3d 1240 (2006).

Retention of Jurisdiction.

Trial court retained jurisdiction to adjudicate alleged probation violations, even though a bench warrant was not issued on the probation violations before the probation period expired, because the proceedings commenced when a probation violation report alleging defendant's possession of illegal drugs was filed in court within the probation period. State v. Ligon-Bruno, 152 Idaho 274, 270 P.3d 1059 (Ct. App. 2011).

Revocation Hearing.

District court was within its authority to revoke defendant's probation, even though revocation proceeding occurred outside of the 5 years probationary period imposed, because defendant's probation was tolled for the two periods between the court's issuance of warrants for probation violations and when those warrants were served, making the total time defendant spent under probationary supervision less than 5 years. State v. Harvey, 142 Idaho 727, 132 P.3d 1255 (Ct. App. 2006).

Revocation of Probation.

Where defendant admitted numerous probation violations, including failing to complete his first required treatment program, using medications contrary to the manner

prescribed by a physician, failing to obtain a valid driver's license, being terminated from a second required treatment program due to poor attendance and violations of his behavior contract, and having contact with another probationer, and defendant was given two opportunities to rehabilitate in the community, but continued to violate his probation, the district court did not abuse its discretion by revoking defendant's probation and ordering execution of his original sentence. State v. Morgan, — Idaho —, 288 P.3d 835 (Ct. App. 2012).

—Proper.

Defendant's revocation of probation on driving under the influence charges was appropriate where defendant continued to drink alcohol after he was placed on probation and failed to obtain a prescription to help with his substance abuse issues. State v. Hanson, 150 Idaho 729, 249 P.3d 1184 (Ct. App. 2011).

Suspended Sentence.

Trial court possessed authority to impose successive two-year periods of probation for each of defendant's misdemeanor convictions, regardless of the length of the suspended jail sentences. State v. Horejs, 143 Idaho 260, 141 P.3d 1129 (Ct. App. 2006).

20-223. Parole and rules governing — Restrictions — Psychiatric or psychological examination. — (a) Subject to section 19-2513, Idaho Code, the commission shall have the power to establish rules, policies or procedures in compliance with chapter 52, title 67, Idaho Code, under which any prisoner, excepting any under sentence of death, may be allowed to go upon parole but to remain while on parole in the legal custody and under the control of the board and subject to be taken back into confinement at the direction of the commission. Any prisoner who is granted parole under the interstate compact may be required to post a bond prior to release or prior to such acceptance under the interstate compact; such bond may be posted by the prisoner, the prisoner's family, or other interested party. Failure to successfully complete parole may be grounds for forfeiture of the bond. Upon successful completion of parole, the amount of the bond may be returned, less an amount for administrative costs as determined by commission rule, in compliance with chapter 52, title 67, Idaho Code. A request must be made for return of the bond within one (1) year of discharge of the offense for which the particular offender was serving parole. Funds collected through the bonding process will be placed in a separate commission receipts fund which is hereby created in the state treasury and utilized for the extradition of parole violators.

(b) No person serving a sentence for rape, incest, committing a lewd act upon a child, crime against nature, or with an intent or an assault with intent to commit any such crimes, or whose history and conduct indicate to the commission that he is a sexually dangerous person, shall be released on parole except upon the examination and evaluation of one (1) or more psychiatrists or psychologists or mental health professionals designated for this purpose by the department of correction to be selected by the commission and such evaluation shall be duly considered by the commission in making its parole determination. The commission may, in its discretion, likewise require a similar examination and evaluation for persons serving sentences for crimes other than those above enumerated. No person making such evaluation shall be held financially responsible to any person for denial of parole by the commission or for the results of the future acts of such person if he be granted parole.

(c) Before considering the parole of any prisoner, the commission shall afford the prisoner the opportunity to be interviewed by the commission, a

commissioner or other designated commission staff. A designated report prepared by commission staff or a designated department of correction employee which is specifically to be used by the commission in making a parole determination shall be exempt from public disclosure; such reports contain information from the presentence investigation report, medical or psychological information, victim information, designated confidential witness information and criminal history information. A parole shall be ordered when, in the discretion of the commission, it is in the best interests of society, and the commission believes the prisoner is able and willing to fulfill the obligations of a law-abiding citizen. Such determination shall not be a reward of clemency and it shall not be considered to be a reduction of sentence or a pardon. The commission may also by its rules, policies or procedures fix the times and conditions under which any application denied may be reconsidered. No action may be maintained against the commission and/or any of its members in any court in connection with any decision taken by the commission to parole a prisoner and neither the commission nor its members shall be liable in any way for its action with respect thereto.

(d) In making any parole or commutation decision with respect to a prisoner, the commission shall consider the compliance of the prisoner with any order of restitution which may have been entered according to section 19-5304, Idaho Code. The commission may make compliance with such an order of restitution a condition of parole.

(e) Except as provided in subsection (a) of this section, no provision of chapter 52, title 67, Idaho Code, shall apply to the commission.

(f) Subject to the limitations of this subsection and notwithstanding any fixed term of confinement or minimum period of confinement as provided in section 19-2513, Idaho Code, the commission may parole an inmate for medical reasons. A prisoner may be considered for medical parole only when the prisoner is permanently incapacitated or terminally ill and when the commission reasonably believes the prisoner no longer poses a threat to the safety of society. For the purposes of this section "permanently incapacitated" shall mean a person who, by reason of an existing physical condition which is not terminal, is permanently and irreversibly physically incapacitated. For the purposes of this section "terminally ill" shall mean a person who has an incurable condition caused by illness or disease and who is irreversibly terminally ill.

(g) The commission shall prepare and send to the house and senate judiciary committees annually a report containing the names, medical condition and current status of all persons granted parole pursuant to subsection (f) of this section.

History.

I.C., § 20-223, as added by 1980, ch. 297, § 6, p. 768; am. 1985, ch. 122, § 6, p. 296; am. 1986, ch. 232, § 5, p. 638; am. 1989, ch. 369, § 1, p. 926; am. 1993, ch. 106, § 1, p. 271; am. 1998, ch. 327, § 1, p. 1055; am. 1999, ch. 326, § 1, p. 834; am. 2000, ch. 368, § 3, p. 1219; am. 2006, ch. 251, § 1, p. 760; am. 2013, ch. 241, § 1, p. 569.

Compiler's Notes. The 2006 amendment, by ch. 251, in subsection (b), inserted "or mental health professionals designated for this purpose by the department of correction" near the middle, and substituted "person" for "psychiatrist or psychologist" in the last sentence.

Section 2 of S.L. 2006, ch. 251 declared an emergency. Approved March 30, 2006.

The 2013 amendment, by ch. 241, substi-

tuted "may be returned" for "will be returned" in the fourth sentence in subsection (a) and inserted the next-to-last sentence in subsection (a).

Cited in: Gibson v. Bennett, 141 Idaho 270, 108 P.3d 417 (Ct. App. 2005).

ANALYSIS

Discretion of commission.
Parole.
—Conditions.
—Right to.
—Timing for review.
Psychiatric evaluation.

Discretion of Commission.

Inmate's due process rights were not violated because the commission on pardons and paroles rejected a hearing officer's recommendation that the inmate be reinstated to parole; the commission had the sole authority to decide whether to revoke the inmate's parole. Mattoon v. Blades, 145 Idaho 634, 181 P.3d 1242 (2008), overruled on other grounds, Verska v. St. Alphonsus Med. Ctr., 151 Idaho 889, 265 P.3d 502 (2011).

Parole.

—Conditions.

No constitutional violation occurred when an inmate was denied parole on the basis of his refusal to participate in a therapeutic community program. A rational basis existed for imposing that condition because his lack of willingness to participate in rehabilitative programming was relevant to the inquiry into parole suitability, required by subsection (c). Warren v. Craven, 152 Idaho 327, 271 P.3d 725 (Ct. App. 2012).

—Right to.

Although subsection (c) directs that parole be granted when it was in the best interests of society and the prisoner is willing to fulfill the obligations of a law-abiding citizen, that determination is a discretionary decision of the commission of pardons and parole that does not vest in the prisoner a legitimate expectation of parole, but rather a mere possibility of parole. Burghart v. Carlin, 151 Idaho 730, 264 P.3d 71 (Ct. App. 2011).

—Timing for Review.

Magistrate erred in finding moot, a habeas petitioner's claim that the commission of pardons and parole violated the law by failing to grant him a parole hearing to consider his eligibility for institutional parole at any time during the service of his first two sentences, and the denial of an opportunity for institutional parole on his first two sentences carried potential collateral consequences of substantial magnitude because the denial of the opportunity for institutional parole potentially added nearly seven years to petitioner's overall period of incarceration. Lake v. Newcomb, 140 Idaho 190, 90 P.3d 1272 (Ct. App. 2004).

Psychiatric Evaluation.

This section is designed to protect the public from sex offenders whose character or high likelihood of reoffense, as revealed by a psychological evaluation, suggests that they are not appropriate candidates for parole. Therefore, a potential parolee is not a member of the class of persons that this section is designed to protect. Dopp v. Idaho Comm'n of Pardons & Parole, 144 Idaho 402, 162 P.3d 781 (Ct. App. 2007).

A.L.R. Adequacy of defense counsel's representation of criminal client regarding guilty pleas — Probation, parole, or pardon possibilities. 31 A.L.R.6th 49.

20-225. Payment for cost of supervision. — Any person under state probation or parole supervision shall be required to contribute not more than seventy-five dollars ($75.00) per month as determined by the board of correction. Costs of supervision are the direct and indirect costs incurred by the department of correction to supervise probationers and parolees, including tests to determine drug and alcohol use, books and written materials to support rehabilitation efforts, and monitoring of physical location through the use of technology. Any failure to pay such contribution shall constitute grounds for the revocation of probation by the court or the revocation of parole by the commission for pardons and parole. The division of probation and parole in the department of correction may exempt a person from the payment of all or any part of the foregoing contribution if it finds any of the following factors to exist:

(1) The offender has diligently attempted but been unable to obtain employment.

(2) The offender has a disability affecting employment, as determined by

a physical, psychological or psychiatric examination acceptable to the division of probation and parole.

Money collected as a fee for services will be placed in the probation and parole receipts revenue fund, which is hereby created in the dedicated fund in the state treasury, and utilized to provide supervision for clients. Moneys in the probation and parole receipts revenue fund may be expended only after appropriation by the legislature. This section shall not restrict the court from ordering the payment of other costs and fees that, by law, may be imposed on persons who have been found guilty of or have pled guilty to a criminal offense, including those who have been placed on probation or parole.

History.

I.C., § 20-225, as added by 1984, ch. 187, § 1, p. 436; am. 2003, ch. 130, § 1, p. 383; am. 2005, ch. 68, § 1, p. 233; am. 2010, ch. 235, § 8, p. 542; am. 2011, ch. 73, § 1, p. 155; am. 2012, ch. 109, § 3, p. 299.

Compiler's Notes. The 2010 amendment, by ch. 235, substituted "a disability affecting employment" for "an employment handicap" in subsection (2).

The 2011 amendment, by ch. 73, substituted "seventy-five dollars ($75.00)" for "fifty dollars ($50.00)" in the first sentence of the introductory paragraph.

The 2012 amendment, by ch. 109, added the last sentence.

Cited in: State v. Korsen, 141 Idaho 445, 111 P.3d 130 (2005).

20-226. Records of prisoners.

Cited in: State v. Marsh, — Idaho —, 283 P.3d 107 (Ct. App. 2011).

20-227. Arrest of parolee, probationer or person under drug court or mental health court supervision without warrant — Agent's warrant — Detention — Report to commission or court. — (1) Any parole or probation officer may arrest a parolee, probationer, or person under drug court or mental health court supervision without a warrant, or may deputize any other officer with power of arrest to do so, by giving such officer a written statement hereafter referred to as an agent's warrant, setting forth that the parolee, probationer, or person under drug court or mental health court supervision has, in the judgment of said parole or probation officer, violated the conditions of drug court or mental health court or conditions of his parole or probation.

(2) Such written statement or agent's warrant, delivered with the parolee, probationer, or person under drug court or mental health court supervision by the arresting officer to the official in charge of the institution from which the parolee was released, the county jail or other place of detention, shall be sufficient warrant for the detention of the probationer, parolee, or person under drug court or mental health court supervision.

(3) The agent's warrant issued by the parole or probation officer shall be sufficient authorization for a local law enforcement officer to transport the probationer, parolee, or person under drug court or mental health court supervision to the appropriate jurisdiction to be housed pending appearance before the sentencing court or the commission.

(4) The parole and probation officer shall at once notify the commission,

or the court, of the arrest and detention of the parolee, probationer, or person under drug court or mental health court supervision, and shall submit in writing a report showing in what manner the parolee, probationer, or person under drug court or mental health court supervision is alleged to have violated the condition of his or her parole, probation, or drug court or mental health court program.

(5) In counties where there are misdemeanor probation officers in addition to department of correction parole or probation officers, those officers shall have the same authority conferred upon department of correction parole or probation officers in this section, to arrest a misdemeanor probationer without a warrant for misdemeanor probation violations occurring in the officer's presence as otherwise provided in this section.

History.

1947, ch. 23, § 27, p. 59; am. 1980, ch. 297, § 9, p. 768; am. 1994, ch. 424, § 1, p. 1332; am. 1999, ch. 300, § 1, p. 752; am. 2004, ch. 227, § 2, p. 669; am. 2006, ch. 143, § 1, p. 404.

Compiler's Notes. The 2006 amendment, by ch. 143, inserted "or mental health court" in the section heading and throughout the section.

Cited in: State v. Covert, 143 Idaho 169, 139 P.3d 771 (Ct. App. 2006); State v. Ligon-Bruno, 152 Idaho 274, 270 P.3d 1059 (Ct. App. 2011).

20-228. Conditions of parole to be specified in writing — Warrant for arrest of suspected violators — Effect of suspension and arrest.

Analysis

Conditions of parole.
—Reasonable.
Constitutionality.
Credit.
Cruel and unusual punishment.
Double jeopardy.
Interpretation.

Conditions of parole.

—Reasonable.

Defendant's sentence, which included a four-year period of parole supervision after his release from one year incarceration, was reasonable because defendant was an alcoholic, this was his third conviction for driving while under the influence, and four months after he was arrested and charged in the instant case, he "went on a bender" and was hospitalized for alcohol detoxification. State v. Oliver, 144 Idaho 722, 170 P.3d 387 (2007).

Constitutionality.

This section did not violate the separation of powers where the legislature had the authority of establishing suitable punishment for various crimes; the legislative pronouncement that an inmate had to be subject to forfeiture of time spent on parole was an exercise of the legislative power to define crimes and their penalties and did not involve resentencing inmates; therefore, the statute did not violate the separation of powers. Gibson v. Bennett, 141 Idaho 270, 108 P.3d 417 (Ct. App. 2005).

Credit.

Inmate's due process rights were not violated when, upon revoking his parole, the commission on pardons and parole forfeited 2,021 days the inmate had previously spent on parole after a prior parole violation, because the inmate was required to serve out the sentence. Mattoon v. Blades, 145 Idaho 634, 181 P.3d 1242 (2008), overruled on other grounds, Verska v. St. Alphonsus Med. Ctr., 151 Idaho 889, 265 P.3d 502 (2011).

Cruel And Unusual Punishment.

Appellate court conducted a proportionality analysis comparing the sentence to those imposed on other defendants for similar offenses, and the burden of demonstrating that a sentence was cruel and unusual was on the person asserting the constitutional violation; therefore, defendant had not shown an inference of gross disproportionality, including the additional time he spent in custody due to the forfeiture of the 314 days, such that defendant failed to demonstrate that his sentences constituted cruel and unusual punishment. Gibson v. Bennett, 141 Idaho 270, 108 P.3d 417 (Ct. App. 2005).

Double Jeopardy.

Revocation of defendant's parole constituted enforcement of a statutorily authorized

condition of parole, that the time spent on parole would not count towards the completion of the judicially imposed sentences; similar to probation revocation, the re-incarceration resulting from the violation of the terms of parole was not a separate punishment for defendant's underlying criminal offenses, such that defendant's double jeopardy claim failed. Gibson v. Bennett, 141 Idaho 270, 108 P.3d 417 (Ct. App. 2005).

Interpretation.

The fact that, when an inmate's parole is revoked, the time that he spent on parole does not count towards the completion of the inmate's sentence, unless the commission for pardons and parole decides in its discretion that the time should be so counted, does not constitute cruel and unusual punishment and does not place him in double jeopardy. Gibson v. Bennett, 141 Idaho 270, 108 P.3d 417 (Ct. App. 2005).

20-229B. Commission rulings.

ANALYSIS

Due process.
Hearing officer.
No prejudice.

Due Process.

Inmate's due process rights were not violated because the commission on pardons and paroles rejected a hearing officer's recommendation that the inmate be reinstated to parole; the commission had the sole authority to decide whether to revoke the inmate's parole. Mattoon v. Blades, 145 Idaho 634, 181 P.3d 1242 (2008), overruled on other grounds, Verska v. St. Alphonsus Med. Ctr., 151 Idaho 889, 265 P.3d 502 (2011).

The procedural safeguards that must be provided in parole revocation proceedings in order to comport with the constitutional right to due process were outlined by the United States supreme court in *Morrissey v. Brewer*, 408 U.S. 471, 485, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972). Matthews v. Jones, 147 Idaho 224, 207 P.3d 200 (Ct. App. 2009).

Hearing Officer.

Absent prejudice to the petitioner in his ability to present a defense caused by the delay, dismissal of parole violation charges and reinstatement of parole is not an available remedy for untimely entrance of a decision by a hearing officer. Matthews v. Jones, 147 Idaho 224, 207 P.3d 200 (Ct. App. 2009).

No Prejudice.

While this section and other parole revocation statutes can be read to vest final decision-making authority concerning revocation of parole in a single member of the commission or in a hearing officer, the parole revocation statutes, read in pari materia, vest authority to decide whether to revoke or continue parole solely in the full commission. Matthews v. Jones, 147 Idaho 224, 207 P.3d 200 (Ct. App. 2009).

20-237. Transmission of convicted persons to penitentiary or custody of board — Notice of conviction to director — Transported by guards — Time for notice.

Presentence Investigation Report.

This section requires the district court to provide the department of correction with a copy of a defendant's presentence investigation report. This section does not limit the period of time that the department may retain the copy of the PSI, nor does it or any other statute authorize the court to demand the return of a PSI. The court has no authority to determine the record retention policies of the department, an agency of the executive branch. State v. Moore, 150 Idaho 17, 244 P.3d 161 (2010).

A.L.R. Constitutional right of prisoners to abortion services and facilities. 28 A.L.R.6th 485.

20-237B. Medical costs of state prisoners housed in correctional facilities. — (1) The state board of correction shall pay to a provider of a medical service for any and all prisoners, committed to the custody of the department of correction, confined in a correctional facility, as defined in section 18-101A(1), Idaho Code, an amount no greater than the reimbursement rate applicable based on the Idaho medicaid reimbursement rate. This limitation applies to all medical care services provided outside the facility,

including hospitalizations, professional services, durable and nondurable goods, prescription drugs and medications provided to any and all prisoners confined in a correctional facility, as defined in section 18-101A(1), Idaho Code. For required services that are not included in the Idaho medicaid reimbursement schedule, the state board of correction shall pay the reasonable value of such service.

(2) For the purposes of subsection (1) of this section, the term "provider of a medical service" shall include only companies, professional associations and other health care service entities whose services are billed directly to the department of correction. The term "provider of a medical service" shall exclude:

(a) Privatized correctional medical providers under contract with the department of correction to provide health care to prison inmates;

(b) Private prison companies;

(c) Out-of-state correctional facilities contracting with the department of correction to house prisoners;

(d) County jails; and

(e) Companies, professional associations and other health care service entities whose services are provided within the terms of agreements with privatized correctional medical providers under contract with the department of correction, private prison companies and county jails.

History.
I.C., § 20-237B, as added by 2005, ch. 157, § 1, p. 487; am. 2008, ch. 61, § 1, p. 153.

Compiler's Notes. The 2008 amendment, by ch. 61, inserted "committed to the custody of the department of correction" in the first sentence in subsection (1).

20-239. Discharge upon service of maximum term. — Any convicted person undergoing sentence in the penitentiary not sooner released under the provisions of this chapter, shall in accordance with the provisions of existing law, be discharged from custody upon serving a maximum sentence provided by law for the offense of which such person was convicted, or the maximum term fixed by the court where the law does not provide for a maximum term. Provided however, if the date of discharge from custody falls on a Saturday, Sunday or legal holiday, then the person may be discharged from custody on the last weekday immediately preceding such Saturday, Sunday or legal holiday.

History.
1947, ch. 53, § 39, p. 59; am. 2007, ch. 32, § 1, p. 74.

Compiler's Notes. The 2007 amendment, by ch. 32, in the first sentence, substituted "chapter" for "act" and "upon" for "on," and added the last sentence.

20-239A. Release upon grant of parole. — Any convicted person undergoing sentence in the penitentiary who has a parole eligibility date which falls on a Saturday, Sunday or legal holiday may be granted a parole release date by the Idaho commission for pardons and parole which falls on the last weekday immediately preceding such Saturday, Sunday or legal holiday.

History.
I.C., § 20-239A, as added by 2008, ch. 42, § 1, p. 99.

Cross Reference. Commission of pardons and parole, § 20-210.

20-240. Respites, reprieves, commutations and pardons — Treason or impeachment.

Effect of Pardon.
Defendant's pardon under Idaho Const., art. IV, § 7 and this section was not a complete removal of the conviction from defendant's record, allowing a later court to include that conviction while calculating the defendant's criminal history. United States v. Bays, 589 F.3d 1035 (9th Cir. 2009).

20-241A. Agreements for confinement of inmates. — The state board of correction shall have the power and it shall be its duty:

(1) To determine the availability of state facilities suitable for the detention and confinement of prisoners held under authority of state law. If the state board of correction determines that suitable state facilities are not available, it may enter into an agreement with the proper authorities of the United States, another state, a political subdivision of this state or another state, or a private prison contractor, to provide for the safekeeping, care, subsistence, proper government, discipline, and to provide programs for the reformation, rehabilitation and treatment of prisoners. Facilities made available to the state board of correction by agreement may be in this state, or in any other state, territory or possession of the United States. The state board of correction shall not enter into an agreement with an authority unable to provide the degree or kind of safekeeping, care and subsistence required by state or federal laws, the constitution of the state of Idaho, the United States constitution, and the rules adopted by the state board of correction. All contracts or agreements entered into by the state board of correction and a private prison contractor shall be subject to the provisions of this section and section 20-209, Idaho Code.

(a) An authority or private prison contractor, receiving physical custody for the purpose of incarceration of a person sentenced by a court under the terms of an agreement made under this section, shall be considered as acting solely as an agent of this state. This state retains jurisdiction over a person incarcerated in an institution of another state, the United States, a political subdivision of this state or another state, or of a private institution;

(b) The attorney general of this state shall enforce an agreement or contract made under this section in a civil suit.

(2) The state board of correction shall have the authority to enter into contracts with private prison contractors for the site selection, design, design/building, acquisition, construction, construction management, maintenance, leasing, leasing/purchasing, management or operation of private prison facilities or any combination of these services, subject to the following requirements and limitations:

(a) Any request for proposals, any original contract, any contract renewal, any price or cost adjustment or any other amendment to any contract for the incarceration of individuals in a private institution, shall be reviewed by the board of correction;

(b) No contract authorized by the provisions of this section shall be awarded until the private prison contractor demonstrates to the satisfaction of the state board of correction that the contractor possesses the necessary qualifications and experience to provide the services specified in the contract; that the contractor can provide the necessary qualified personnel to implement the terms of the contract; that the financial condition of the contractor is such that the terms of the contract can be fulfilled; that the contractor has the ability to comply with applicable court orders and corrections standards; and that the proposed private prison facilities or the correctional services proposed by the contractor meet constitutional minimums;

(c) No contract authorized by the provisions of this section shall be awarded until the private prison contractor demonstrates to the satisfaction of the state board of correction that the contractor can obtain insurance or provide self-insurance to indemnify the state against possible claims arising from the operation of prison facilities by the contractor, and to compensate the state for any losses incurred due to the operation of prison facilities;

(d) Contracts awarded to private prison contractors pursuant to the provisions of this section shall be entered into for a period specified in each contract, subject to availability of funds annually appropriated by the Idaho legislature for that purpose. No contract awarded pursuant to this section shall provide for the encumbrance of funds beyond the amount available for a fiscal year;

(e) A contract may provide for annual contract price or cost adjustments, except that any adjustments may be made only once each year effective on the anniversary of the effective date of the contract.

(3) Any contract between the state board of correction and a private prison contractor, whereby the contractor provides for the housing, care, and control of inmates in a nondepartmental facility operated by the contractor, shall contain, in addition to other provisions, terms and conditions:

(a) A requirement that the contractor is to provide said services in a facility which meets standards as required by the Idaho department of correction;

(b) If a private prison institution is to be located in the state of Idaho on private land, it shall be required that the contractor obtain written authorization from the governing board of any municipality in which the facility is to be located, or if the facility is not to be located within the municipality, written authorization from the board of county commissioners of the county in which the facility is to be located;

(c) A requirement that the private prison contractor shall provide training to its personnel to a level acceptable to the Idaho department of correction. The Idaho department of correction may provide training to the personnel of a private prison contractor and may charge a reasonable fee for the training, not to exceed the cost of training. The provisions of this section shall not be construed to confer peace officer status upon any employee of the private prison contractor or to authorize the use of firearms except to prevent escape from the facility or from custody while

being transported to or from the facility or to prevent an act which would cause death or serious bodily injury to any person. The provisions of this section shall not be construed to confer Idaho state employee status upon any employee of the private prison contractor;

(d) A requirement that any private prison contractor operating a facility that houses prisoners pursuant to a contract between the contractor and the state board of correction shall cooperate with the Idaho department of correction for the prevention and suppression of serious disturbances, including riots, escapes, affrays or insurrections, at the private prison facilities. To effectuate this provision, the contract shall, at a minimum, provide:

(i) For participation by the private prison contractor in multiagency training for the preventing and responding to serious disturbances at a private prison facility;

(ii) For participation by the private prison contractor in multiagency agreements for the prevention of and response to serious disturbances at a private prison facility and reimbursement for emergency services provided by governmental entities;

(iii) For notification by the private prison contractor to the director of the Idaho department of correction in the event of a serious disturbance at a private prison facility and for consultation by the director of the Idaho department of correction with the private prison contractor prior to a response by the director of the Idaho department of correction;

(iv) That the private prison contractor shall provide access to the private prison facility for the Idaho department of correction and such other governmental entities or agencies as the Idaho department of correction may designate, including space to establish a command post, for responding to a serious disturbance;

(v) That, in the event of a serious disturbance, the private prison contractor shall participate in a unified command structure under the director of the Idaho department of correction until, in the director of the Idaho department of correction's discretion, the serious disturbance is resolved.

(4) Contracts awarded under the provisions of this section shall, at a minimum, comply with the following:

(a) Provide for internal and perimeter security to protect the public, employees and inmates;

(b) Provide that the private prison contractor shall not benefit financially from the labor of inmates nor shall any inmate ever be placed in a position of authority over another inmate. Any profits realized from the operation of a prison enterprise program shall revert to the department of correction or appropriate governmental authority. Private prison contractors may work with the Idaho department of correction in setting up work and training programs. Private prison contractors shall be authorized to purchase services and commodities from the Idaho department of correction which are necessary for implementing work or training opportunities as outlined in this section;

(c) Impose discipline on inmates only in accordance with applicable Idaho department of correction rules and procedures;

(d) Provide proper food, clothing, housing and medical care as provided for in the contract.

(5) A private prison contractor, in carrying out its duties and responsibilities under contract with the state board of correction, shall not be bound by the enactments of the legislature which govern the appointment, qualifications, duties, salaries or benefits of wardens, managers or other correctional employees. No employee of the private prison contractor shall be considered an employee of the state of Idaho. A private prison contractor shall not employ any person who does not satisfy the board of correction's personnel policies.

(6) The director of the Idaho department of correction or his designee shall monitor the performance of the private prison contractor. In all such contracts the state shall retain clear supervisory and monitoring powers over the operation and management of the private institutions to insure that the inmates are properly cared for and that the employees of the facility and the public are adequately protected. Included in the powers and responsibilities of the director of the Idaho department of correction or his designee when acting as the chief contract monitor of the private prison contract are:

(a) Approval of all inmate releases on furlough or work release;

(b) Approval of the type of work offenders may perform pursuant to this section and review and approval of any incentive pay plan presented by the private prison contractor for offender pay;

(c) Approval of the training program for the private prison contractor's employees;

(d) A determination if the minimum requirements of the contract are being satisfactorily performed;

(e) Promulgation of rules interpreting or making specific application of the provisions of this section;

(f) A determination if appropriate policies and procedures of the Idaho department of correction are being followed by the private prison contractor and its personnel;

(g) The duty, as set forth in section 20-209B, Idaho Code, to prevent, control and suppress serious disturbances, including riots, escapes, affrays and insurrections at a private prison facility that houses prisoners pursuant to a contract between the private prison contractor and the state board of correction, that, in the director of the Idaho department of correction's discretion, threaten the health, safety, security and property of the facility, facility staff, prisoners, the public and the state of Idaho. This duty shall be exercised in the director of the Idaho department of correction's discretion after consultation with the private prison contractor. The director of the Idaho department of correction shall designate personnel and facilities under the control of the state board of correction and shall enter into such agreements as deemed necessary with other governmental entities, to respond to serious disturbances at a private prison facility.

(7) No contract for correctional services may authorize, allow, or imply a delegation of authority or responsibility to a private prison contractor which would allow the contractor to:

(a) Develop or implement procedures for calculating inmate release dates;

(b) Approve the type of work inmates may perform and the wages which may be given to inmates engaging in the work;

(c) Place an inmate under less restrictive custody or more restrictive custody or take any disciplinary actions contrary to rules and procedures approved by the Idaho department of correction;

(d) Develop or implement procedures regarding the care, custody and treatment of inmates which are contrary to the Idaho department of correction's policies and procedures, state or federal law.

(8) Any offense, which if committed in a state institution or facility would be a crime, including escape, shall also be a crime if committed by or with regard to offenders assigned to an institution or facility operated pursuant to a contract between the state and a private prison contractor.

(9) Any reference in the Idaho Code to imprisonment in a state penitentiary, or state prison, or incarceration under the control and custody of the Idaho board of correction shall be interpreted to include incarceration in a private prison facility.

History.

I.C., § 20-241A, as added by 1997, ch. 223, § 3, p. 655; am. 2010, ch. 351, § 3, p. 915.

Compiler's Notes. The 2010 amendment, by ch. 351, added paragraphs (3)(d) and (6)(g).

Section 4 of S.L. 2010, ch. 351 declared an emergency and applied to contracts entered into or renewed on and after its passage and approval. Approved April 12, 2010.

20-245. Offender labor on state and community service projects. — (1) Offender labor on state projects. The state board of correction shall have the authority to use, under such rules as they may prescribe, the labor of offenders either within or without the walls of the penitentiary and on all public works done under the direct control of the state; that offender labor under control of the state board of correction shall manufacture and repair state highway signs, except for highways and projects where federal regulations would prohibit the use of signs so manufactured; provided, that so far as practicable any manufacture conducted within the walls shall be in connection with metal motor license plates, road or street signs furnished by the state or used by its municipalities, wearing apparel, articles and containers, for state use in the various departments or institutions of the state not for sale upon the open market. When any product produced by the offender shall be used by any department or other institution of the state, the current appropriation shall receive from such department or institution such reimbursement therefor as may be fixed by the state board of correction with the approval of the state board of examiners.

(2) Offender labor on community service projects. The state board of correction shall have the authority to assign parolees under department of correction supervision, probationers under court order or department of correction supervision and offender residents of community work centers under the direction or order of the board of correction, as community service workers as set forth in section 72-102(6), Idaho Code. The state board of correction shall have the authority to charge offenders performing commu-

nity service work an hourly fee in an amount to be determined by the state insurance fund, to be remitted to the state insurance fund for purposes of providing worker's compensation insurance for parolees, probationers or community work center residents assigned as community service workers.

History.
1947, ch. 53, § 45, p. 59; am. 1957, ch. 207, § 1, p. 434; am. 2004, ch. 149, § 2, p. 479; am. 2006, ch. 206, § 3, p. 627.

Compiler's Notes. The 2006 amendment, by ch. 206, updated the section reference in subsection (2).

CHAPTER 3

INTERSTATE COMPACT FOR ADULT OFFENDER SUPERVISION

Compiler's Notes. The 2006 amendment, by ch. 16, rewrote the chapter heading which formerly read, "Out-of-State Parolee Supervision Act."

20-301. Compacts with other states authorized.

A.L.R. Construction and application of interstate compact for adult offender supervision. 75 A.L.R.6th 181.

20-302. Short title.

A.L.R. Construction and application of interstate compact for adult offender supervision. 75 A.L.R.6th 181.

CHAPTER 4

CORRECTIONAL INDUSTRIES ACT

SECTION.

20-408. Duties of board. — The board of correction shall:

(a) Recommend productive enterprises in the penal institutions under the jurisdiction of the department of correction, in such volume and of such kinds as to eliminate unnecessary idleness among the inmates and to provide diversified work activities which will serve as a means of vocational education and rehabilitation, as well as financial support;

(b) Determine the advisability and suitability of establishing, expanding, diminishing, or discontinuing any enterprise;

(c) Hold hearings and make rules for conducting such hearings. The board may, in its discretion, hold public hearings on any subject within its jurisdiction;

(d) Conduct programs of research, education and publicity for correctional industries products;

(e) Secure new markets for correctional industries products;

(f) Enter into such contracts and agreements as may be necessary or advisable pursuant to the provisions of this act;

(g) Appoint and employ all necessary officers, agents and other personnel, including any experts in any correctional industries enterprise pursuit, prescribe their duties and fix their compensation;

(h) Cooperate with any local, state or national organization or agency and to enter into contracts and agreements with such agencies for carrying on and promoting the purposes of this act;

(i) Adopt, rescind, modify and amend all necessary and proper orders, rules and regulations for the exercise of its powers and the performance of its duties herein;

(j) Keep or cause to be kept in accordance with accepted standards of good accounting practice, accurate records of all collections, receipts, deposits, withdrawals, disbursements, paid-outs, moneys, and other financial transactions made and done pursuant to this act. The books, records and accounts shall be open to inspection and audit by the legislative council and the public at all times.

History.

I.C., § 20-408, as added by 1974, ch. 48, § 2, p. 1096; am. 1980, ch. 101, § 6, p. 220; am. 1993, ch. 327, § 5, p. 1186; am. 2010, ch. 252, § 1, p. 642.

Compiler's Notes. The 2010 amendment, by ch. 252, deleted the second sentence in subsection (j), which read: "Such records, books and accounts shall be audited subject to lawful, sound procedures and methods of accounting at least annually and a copy of such audit shall be delivered within thirty (30) days after completion thereof to the board of correction."

CHAPTER 5

JUVENILE CORRECTIONS ACT

20-501. Legislative intent. — It is the policy of the state of Idaho that the juvenile corrections system will be based on the following principles: accountability; community protection; and competency development. Where a juvenile has been found to be within the purview of the juvenile corrections act, the court shall impose a sentence that will protect the community, hold the juvenile offender accountable for his actions, and assist the juvenile offender in developing skills to become a contributing member of a diverse community. It is the further policy of the state of Idaho that the parents or other legal guardians of the juvenile offender participate in the accomplishment of these goals through participation in counseling and treatment designed to develop positive parenting skills and an understanding of the family's role in the juvenile offender's behavior. It is the further intent of the legislature that the parents of the juvenile offender be held accountable, where appropriate, through monetary reimbursement for supervision and confinement of the juvenile offender, and restitution to victims of the juvenile offender's delinquent acts. In enacting this legislation, the legislature finds that the juvenile corrections system should encompass the following aspects: day treatment, community programs, observation and assessment programs, probation services, secure facilities, after-care and assistance to counties for juvenile offenders not committed to the custody of the department of juvenile corrections.

The following is a brief description of what the legislature intends to become the components of Idaho's juvenile corrections system:

Probation. Probation officers would have twenty-four (24) hour on call responsibility for juvenile offenders and would monitor their activities on a continual basis. Probation officers would be responsible for assisting juvenile offenders and their families in accessing counseling or treatment resources, close supervision of juvenile offenders' activities, supervision of restitution and coordination of other services provided to juvenile offenders. Juvenile offenders ordered into the custody of the department of juvenile corrections would be monitored by a county probation officer.

Day treatment. Day treatment programs would be time limited nonresidential treatment and educational programs. Included in these programs would be trackers who would provide intensive supervision of juvenile offenders through daily contact and by counseling juvenile offenders regarding employment, education, courts, family and life skills. Nonresidential alcohol and drug programs would provide outpatient assessment and counseling for juvenile offenders with substance abuse problems.

Community programs. It is intended that community programs would exist throughout the state to provide twenty-four (24) hour residential supervision and treatment options to juvenile offenders in close proximity to their families and their community. It is intended that these programs would strengthen the juvenile offender's relationship with family, engender a commitment to school and employment, promote the development of competency and life skills and help juvenile offenders generalize appropriate behavior into their environment.

Observation and assessment. Regional observation and assessment centers would be provided, either directly or on a contract basis, to conduct observation and assessment of the juvenile offender in a short-term residential experience. It is intended that these programs would maintain standardized home and daily routines with intensive daily programming.

Secure facilities. Secure facilities would provide secure confinement, discipline, education and treatment of the most seriously delinquent juvenile offenders. Programs at the secure facilities would be designed to help juvenile offenders recognize accountability for delinquent behavior by confronting and eliminating delinquent norms, criminal thinking and antisocial behavior and making restitution to victims through community service or other restitution programs.

It is the further intent of the legislature that the primary purpose of this act is to provide a continuum of programs which emphasize the juvenile offender's accountability for his actions while assisting him in the development of skills necessary to function effectively and positively in the community in a manner consistent with public safety. These services and programs will individualize treatment and control of the juvenile offender for the benefit of the juvenile offender and the protection of society. It is legislative intent that the department of juvenile corrections be operated within the framework of the following principles to accomplish this mission:

(1) Provide humane, disciplined confinement to a juvenile offender who presents a danger to the community.

(2) Strengthen opportunities for the juvenile offender's development of competency and life skills by expanding the juvenile offender's access to applicable programs and community resources.

(3) Hold juvenile offenders accountable for their delinquent behavior through such means as victim restitution, community service programs and the sharing of correctional costs.

(4) Invoke the participation of the juvenile offender's parent or legal guardian in assisting the juvenile offender to recognize and accept responsibility for his delinquent or other antisocial behavior and hold the parent accountable, where appropriate, through the payment of detention costs and

restitution to victims and through attendance at programs for the development of positive parenting skills designed to promote a functional relationship between the juvenile offender and his family.

(5) Develop efficient and effective juvenile correctional programs within the framework of professional correctional standards, legislative intent and available resources.

(6) Provide for a diversity of innovative and effective programs through research on delinquent behavior and the continuous evaluation of correctional programs.

(7) Assist counties in developing meaningful programs for juvenile offenders who have come into the juvenile corrections system but who have not been committed to the custody of the department of juvenile corrections.

(8) Provide programs to increase public awareness of the mission of the juvenile corrections system and encourage public participation in developing an effective juvenile corrections system designed to aid in reducing juvenile crime in this state.

(9) Develop and maintain a statewide juvenile offender information system.

History.

1963, ch. 319, § 1, p. 876; am. 1984, ch. 81, § 2, p. 148; am. 1989, ch. 155, § 1, p. 371; am. and redesig. 1995, ch. 44, § 2, p. 65; am. 2012, ch. 19, § 1, p. 39; am. 2012, ch. 257, § 5, p. 709.

Compiler's Notes. This section was amended by two 2012 acts which appear to be compatible and have been compiled together.

The 2012 amendment, by ch. 19, substituted "juvenile offender," or a variation thereof, for "juvenile," or a variation thereof, throughout the section.

The 2012 amendment, by ch. 257, deleted "or legal guardians" and "or legal guardian" following "parents" and "parent" in the fourth sentence in the first paragraph and in paragraph (4).

Cited in: State v. Doe (In re Doe), 147 Idaho 243, 207 P.3d 974 (2009); State v. Doe, 149 Idaho 353, 233 P.3d 1275 (2010).

20-502. Definitions. — When used in this chapter, unless the context otherwise requires:

(1) "Adult" means a person eighteen (18) years of age or older.

(2) "Commit" means to transfer legal custody.

(3) "Community-based program" means an in-home confinement program or a nonsecure or staff secure residential or nonresidential program operated to supervise and provide competency development to juvenile offenders in the least restrictive setting, consistent with public safety, operated by the state or under contract with the state or by the county.

(4) "Court" means any district court within the state of Idaho, or magistrate's division thereof.

(5) "Department" means the state department of juvenile corrections.

(6) "Detention" means the temporary placement of juvenile offenders who require secure custody for their own or the community's protection in physically restricting facilities.

(7) "Director" means the director of the department of juvenile corrections.

(8) "Diversion" means the utilization of local community resources, churches, counseling for the juvenile offender and/or family, substance abuse counseling, informal probation, community service work, voluntary

restitution, or any other available service or program as an alternative to the filing of a petition with the juvenile court.

(9) "Judge" means a district judge or a magistrate.

(10) "Juvenile" means a person less than eighteen (18) years of age or who was less than eighteen (18) years of age at the time of any alleged act, omission or status.

(11) "Juvenile correctional center" means any state-operated residential facility or facility operated pursuant to a contract with the state that provides twenty-four (24) hour supervision and confinement for juvenile offenders committed to the custody of the department.

(12) "Juvenile detention center" means a secure facility established pursuant to sections 20-517 and 20-518, Idaho Code, and in compliance with IDAPA 05.01.02.

(13) "Juvenile offender" means a person under the age of eighteen (18) at the time of any act, omission or status and who has been adjudicated as being within the purview of this chapter.

(14) "Legal custody" means the relationship created by the court's decree which imposes upon the custodian responsibilities of physical possession of the juvenile offender, the duty to protect, train and discipline him and to provide him with food, shelter, education and ordinary medical care.

(15) "Legal guardian" means a person appointed as guardian of a minor under the laws of Idaho. For the purposes of this chapter, legal guardian does not include and shall not be construed to include the owner, operator or the agent of an owner or operator of a detention center, observation and assessment center, secure facility, residential facility or other facility having temporary or long-term physical custody of the juvenile offender.

(16) "Observation and assessment program" means any state-operated or purchased service program responsible for temporary custody of juvenile offenders for observation and assessment.

(17) "Secure facility" means any architecturally secure residential facility that provides twenty-four (24) hour supervision and confinement for juvenile offenders committed to the custody of the department.

(18) "Staff secure facility" means a nonarchitecturally secure residential facility with awake staff twenty-four (24) hours a day, seven (7) days a week for intensive supervision of juvenile offenders.

(19) "Work program" means a public service work project which employs juvenile offenders at a reasonable wage for the purpose of reimbursing victims of the juvenile offender's delinquent behavior.

History.

1963, ch. 319, § 2, p. 876; am. 1973, ch. 27, § 1, p. 51; am. 1984, ch. 81, § 3, p. 148; am. 1989, ch. 155, § 2, p. 371; am. 1990, ch. 245, § 1, p. 696; am. 1990, ch. 355, § 1, p. 958; am. and redesig. 1995, ch. 44, § 3, p. 65; am. 1995, ch. 277, § 1, p. 925; am. 1997, ch. 83, § 1, p. 195; am. 2000, ch. 139, § 1, p. 365; am. 2012, ch. 19, § 2, p. 39.

Compiler's Notes. The 2012 amendment, by ch. 19, deleted former subsection (7), defining "detention center" and added present subsection (12), redesignating the intervening subsections; substituted "juvenile offenders" for "juveniles" in subsection (6); inserted "offender" in subsection (8); substituted "alleged act, omission or status" for "act, omission or status bringing the person within the purview of this chapter" in subsection (10); rewrote subsection (11), which formerly read, "'Juvenile corrections center' means any state-operated secure facility wherever located"; added present subsection (12); rewrote subsection (13), which formerly read, "'Juvenile offender'

means a person under the age of eighteen (18), committed by the court to the custody, care and jurisdiction of the department for confinement in a secure or community-based facility following adjudication for a delinquent act which would constitute a felony or misdemeanor if committed by an adult"; inserted "offender" in subsection (14); substituted "residential facility that provides" for "state-operated facility or facility operated under contract with the state which provides" in subsection (17); and, in subsection (18), inserted "nonarchitecturally secure" and substituted "juvenile offenders" for "juveniles."

Cited in: State v. Doe (In re Doe), 147 Idaho 243, 207 P.3d 974 (2009).

20-503. Department of juvenile corrections created — Appointment of director — Powers and duties of department. — (1) The department of juvenile corrections is hereby created. The department shall, for the purposes of section 20, article IV, of the constitution of the state of Idaho, be an executive department of the state government.

(2) The department shall be under the control and supervision of a director, who shall be appointed by the governor, with the advice and consent of the senate. The director shall exercise all of the powers and duties necessary to carry out the proper administration of the department and may delegate duties to employees and officers of the department. The director shall have the authority to employ an attorney or attorneys to provide legal services to the department and such managers, assistants, clerical staff and other employees necessary to the proper functioning and administration of the department.

(3) The department of juvenile corrections shall be composed of such administrative units as may be established by the director for the proper and efficient administration of the powers and duties assigned to the director or the department. The director shall appoint an administrator for each administrative unit within the department.

(4) The director shall have full power and authority to do all things necessary to establish and provide for the administration and operation of the department of juvenile corrections and to accomplish an orderly transition to the department of juvenile corrections and the counties of the duties and responsibilities for juvenile offenders and the juvenile justice system being performed by the department of health and welfare. It is intended that the director and staff of the department of health and welfare work cooperatively with the director and staff of the department of juvenile corrections and the counties in this effort, while continuing with their duties to juvenile offenders in the custody of the department of health and welfare until the official transfer of such duties to the department of juvenile corrections and the counties on October 1, 1995.

History.

I.C., § 20-503, as added by 1995, ch. 44, § 4, p. 65; am. 1995, ch. 277, § 2, p. 925; am. 2012, ch. 19, § 3, p. 39.

Compiler's Notes. The 2012 amendment, by ch. 19, deleted former subsection (5), which read: "Effective October 1, 1995, all existing commitments to the department of health and welfare made pursuant to section 16-1814(1)6., Idaho Code, are hereby transferred to the department of juvenile corrections. All powers, duties and functions with respect to those commitments are hereby transferred from the department of health and welfare to the department of juvenile corrections. The director of the department of juvenile corrections shall have all the powers and duties as may have been or could have been exercised by his predecessors in law pursuant to these commitments and he shall be the successor in law to those commitment duties without re-

gard to the language of individual judicial orders of commitment for the juveniles."

20-504. Duties of the department of juvenile corrections. — (1) The department shall have jurisdiction over all juvenile offenders committed to it pursuant to chapter 5, title 20, Idaho Code.

(2) The department shall have legal custody over all juvenile offenders committed to it by the courts of this state for confinement. The department shall not have legal guardianship of any juvenile offender.

(3) The department is responsible for all juvenile offenders committed to it by the courts of this state for confinement. The department shall also establish minimum standards for detention, care and certification of approved detention facilities based upon such standards.

(4) The department shall establish and administer all secure residential facilities including all state juvenile correctional centers.

(5) The department shall make all decisions regarding placement of juvenile offenders committed to it in the most appropriate program for supervision and treatment.

(6) The department shall establish an observation and assessment process for juvenile offenders committed to it by a court.

(7) The department shall establish liaison services with the counties or within the department's regions.

(8) The department may establish and operate work programs designed to employ juvenile offenders committed to it in public service work projects for the purpose of reimbursing victims of the juvenile offender's delinquent behavior.

(9) The department is hereby authorized and may place juvenile offenders committed to it pursuant to this chapter in a community-based or private program; provided, that the person, agency or association operating the facility or program has been approved and has otherwise complied with all applicable state and local laws.

(10) The department shall establish minimum standards for the operation of all private residential and nonresidential facilities and programs that provide services to juvenile offenders committed to the department. The standards shall be no more stringent than standards imposed for facilities operated by the department or for detention facilities operated by counties.

(11) The department shall provide technical assistance to counties establishing research-based programs for juvenile offenders who either have been found to come under the purview of this chapter or who have had their case informally diverted pursuant to section 20-511, Idaho Code, and who have not been committed to the legal custody of the department.

(12) The department shall have authority to adopt such administrative rules pursuant to the procedures provided in chapter 52, title 67, Idaho Code, as are deemed necessary or appropriate for the functioning of the department and the implementation and administration of this act.

(13) Subject to any competitive bidding requirements otherwise provided by law, the department shall have authority to enter into contracts with a private association or organization or other public agency or organization for the inspection and licensure of detention facilities.

(14) Subject to any competitive bidding requirements otherwise provided by law, the department shall have authority to enter into contracts with private providers or local governmental agencies for the confinement or other permanent or temporary placement of juvenile offenders committed to its custody.

(15) The department shall have authority to apply for, receive and expend federal funds, subject to appropriation by the legislature. The department shall have authority to establish guidelines for and administer the distribution of state juvenile corrections act funds to counties for the employment and training of county probation officers, the establishment of secure and nonsecure residential or nonresidential facilities and programs for juvenile offenders. The department may require that a county provide matching funds as a condition of receiving juvenile corrections act funds. The department, by rule, in cooperation with the courts and the counties, shall establish uniform standards for county juvenile probation services, as well as qualifications for and standards for the training of juvenile probation officers.

History.

I.C., § 16-1826, as added by 1989, ch. 155, § 9, p. 371; am. and redesig. 1995, ch. 44, § 5, p. 65; am. 1995, ch. 277, § 3, p. 925; am. 1997, ch. 83, § 2, p. 195; am. 1997, ch. 261, § 1, p. 745; am. 2000, ch. 139, § 2, p. 365; am. 2003, ch. 35, § 1, p. 154; am. 2004, ch. 50, § 2, p. 236; am. 2007, ch. 47, § 1, p. 118; am. 2012, ch. 19, § 4, p. 39.

Compiler's Notes. The 2007 amendment, by ch. 47, twice substituted "juvenile corrections act funds" for "block grant funds" in subsection (14).

The 2012 amendment, by ch. 19, substituted "juvenile offenders" for "juveniles" in subsections (1), (9), (11), and (14); added subsection (2); redesignated former subsections (2) through (14) as subsections (3) through (15); substituted "correctional centers" for "corrections centers" in subsection (4); inserted "committed to it" in subsection (8); in subsection (10), inserted "committed to the department"; and deleted former subsection (15), which read: "All of the powers and duties imposed upon or granted to the director of the department of health and welfare or the board of health and welfare pursuant to chapter 18, title 16, Idaho Code, are hereby transferred to the director of the department of juvenile corrections. The director shall have all such powers and duties as may have been or could have been exercised by his predecessors in law with respect to chapter 18, title 16, Idaho Code, and shall be the successor in law to all contractual obligations entered into by his predecessor in law."

20-504A. State juvenile correctional centers — Purposes — Powers and duties of the department and the director. — (1) The purposes of a juvenile correctional center shall be:

(a) The care, control and competency development of adjudicated juvenile offenders meeting standards for admission as adopted by the Idaho supreme court;

(b) The provision pursuant to agreement with the counties of detention services for juvenile offenders subject to administrative or court order;

(c) The provision of observation and assessment services for juvenile offenders committed to the department of juvenile corrections; and

(d) To accept for placement those individuals sentenced to a state juvenile correctional center by a district court, or pursuant to agreement with the board of correction, subsequent to waiver of juvenile court jurisdiction.

(2) The department shall administer and provide general oversight of all state juvenile correctional centers and any other secure or nonsecure

facilities holding juvenile offenders committed to it as required by the juvenile corrections act.

(3) The department shall assure that the educational programs of state juvenile correctional centers are in compliance with educational standards that are approved by the Idaho state board of education or an accrediting association recognized by the Idaho state board of education.

(4) The department shall have the power to promulgate rules in accordance with the provisions of chapter 52, title 67, Idaho Code, for the administration and operation of state juvenile correctional centers.

(5) The director shall have the power:

(a) To employ, fix the salary and prescribe the duties of a superintendent for each juvenile correctional center. The superintendent shall be a nonclassified employee and shall serve at the pleasure of the director. With the advice of the director, the superintendent may appoint and prescribe the duties of assistants, instructors, specialists and other employees required for the operation of the center;

(b) To remove any employee of a juvenile correctional center for cause or as allowed by chapter 53, title 67, Idaho Code;

(c) To ensure that all teachers, except specialists, hold teaching certificates issued under the authority of the state board of education which are valid for the grades and subjects taught. All specialists shall hold diplomas from an accredited school of their specialty;

(d) To have, at all times, general supervision and control of all property, real and personal, appertaining to the center, and to insure the same; and

(e) To expend tax moneys appropriated, or otherwise placed to the credit of the center for maintenance and operation and to account for the same as prescribed by law.

History.

I.C., § 20-504A, as added by 1997, ch. 83, § 3, p. 195; am. 2012, ch. 19, § 5, p. 39.

Compiler's Notes. The 2012 amendment, by ch. 19, substituted "juvenile correctional" for "juvenile corrections" in the section heading and throughout the section; substituted "juvenile offenders" for "juveniles" in paragraphs (1)(b) and (1)(c); inserted "holding juvenile offenders committed to it" near the end of subsection (2); substituted "that are approved" for "for secure juvenile facilities which are approved" in subsection (3); rewrote paragraph (5)(b), which formerly read, "To remove any employee of a juvenile corrections center for cause"; and deleted former subsection (6), which read: "Wherever the term 'State Youth Training Center' or 'State Youth Services Center' shall appear in the Idaho Code it shall mean any state juvenile corrections center."

20-505. Jurisdiction. — Subject to the prior jurisdiction of the United States, the court shall have exclusive, original jurisdiction over any juvenile and over any adult who was a juvenile at the time of any act, omission or status, in the county in which the juvenile resides, or in the county in which the act, omission or status allegedly took place, in the following cases:

(1) Where the act, omission or status occurs in the state of Idaho and is prohibited by federal, state, local or municipal law or ordinance by reason of minority only;

(2) Where the act or omission occurs in the state of Idaho and is a violation of any federal, state, local or municipal law or ordinance which would be a crime if committed by an adult;

(3) Concerning any juvenile where the juvenile comes under the purview of the interstate compact for juveniles as set forth in chapter 19, title 16, Idaho Code;

(4) This chapter shall not apply to juvenile violators of beer, wine or other alcohol and tobacco laws; except that a juvenile violator under the age of eighteen (18) years at the time of the violation may, at the discretion of the court, be treated under the provisions of this chapter;

(5) This chapter shall not apply to the juvenile offenders who are transferred for criminal prosecution as an adult, as provided in this chapter;

(6) This chapter shall not apply to juvenile violators of traffic, watercraft, fish and game, failure to obey a misdemeanor citation and criminal contempt laws; except that a juvenile violator under the age of eighteen (18) years at the time of such violation may, at the discretion of the court, be treated under the provisions of this chapter;

(7) This chapter shall not apply to juvenile sex offenders who violate the provisions of section 18-8414, Idaho Code.

History.

I.C., § 16-1803, as added by 1976, ch. 233, § 2, p. 823; am. 1981, ch. 112, § 1, p. 168; am. 1981, ch. 222, § 6, p. 412; am. 1982, ch. 110, § 1, p. 311; am. 1984, ch. 81, § 4, p. 148; am. 1990, ch. 355, § 2, p. 958; am. 1993, ch. 154, § 2, p. 390; am. 1994, ch. 150, § 1, p. 344; am. 1994, ch. 414, § 2, p. 1302; am. and redesig. 1995, ch. 44, § 6, p. 65; am. 1996, ch. 261, § 3, p. 857; am. 1998, ch. 69, § 1, p. 262; am. 1999, ch. 388, § 1, p. 1083; am. 1999, ch. 389, § 1, p. 1085; am. 2002, ch. 185, § 1, p. 536; am. 2004, ch. 270, § 3, p. 752; am. 2005, ch. 94, § 1, p. 314; am. 2005, ch. 187, § 1, p. 573; am. 2012, ch. 19, § 6, p. 39.

Compiler's Notes. This section was amended by two 2005 acts which appear to be compatible and have been compiled together.

The 2005 amendment, by ch. 94, § 1, inserted "occurs in the state of Idaho and" in subsections (1) and (2) and deleted the words "regardless of where the same occurred" following "law or ordinance by reason of minority only" in subsection (1) and following "municipal law or ordinance which would be a crime if committed by an adult" in subsection (2).

The 2005 amendment, by ch. 187, § 1, substituted "eighteen (18) years" for "fourteen (14) years" in subsections (4) and (6).

The 2012 amendment, by ch. 19, rewrote subsection (5), which formerly read: "This chapter shall not apply to the violent juvenile offender, as defined in this chapter."

Cited in: State v. Doe (In re Doe), 147 Idaho 243, 207 P.3d 974 (2009).

20-507. Retention of jurisdiction. — Jurisdiction obtained by the court in the case of a juvenile offender shall be retained by it for the purposes of this act until he becomes twenty-one (21) years of age, unless terminated prior thereto. If a juvenile offender under the jurisdiction of the court and after attaining eighteen (18) years of age, is charged with a felony, he shall be treated as any other adult offender. If a person eighteen (18) years of age or older already under court jurisdiction is convicted of a felony, that conviction shall terminate the jurisdiction of the court, provided however, nothing herein contained shall prohibit any court from proceeding as provided in section 20-508(2), Idaho Code.

History.

1963, ch. 319, § 5, p. 876; am. 1984, ch. 81, § 5, p. 148; am. 1989, ch. 155, § 3, p. 371; am. and redesig. 1995, ch. 44, § 8, p. 65; am. 2012, ch. 19, § 7, p. 39.

Compiler's Notes. The 2012 amendment, by ch. 19, twice inserted "offender" following "juvenile" in the first two sentences.

Cited in: State v. Doe (In re Doe), 147 Idaho 243, 207 P.3d 974 (2009).

Jurisdiction Terminated.

Under the plain language of this section,

the juvenile court's jurisdiction terminated when a juvenile reached 21 years of age despite his having admitted to violating a condition of his probation and the State filing a petition against him prior to his becoming 21. State v. Doe (In re Doe), 147 Idaho 326, 208 P.3d 730 (2009).

Where state filed a petition, pursuant to this section, to transfer defendant, who was adjudicated as a juvenile with a crime that required him to register as a juvenile sex offender, in the defendant's juvenile case after the defendant had turned 21, that court no longer had jurisdiction to hear the petition. State v. Giovanelli, 152 Idaho 717, 274 P.3d 18 (Ct. App. 2012).

20-508. Waiver of jurisdiction and transfer to other courts. — (1) After the filing of a petition and after full investigation and hearing, the court may waive jurisdiction under the juvenile corrections act over the juvenile and order that the juvenile be held for adult criminal proceedings when:

(a) A juvenile is alleged to have committed any of the crimes enumerated in section 20-509, Idaho Code; or

(b) A juvenile is alleged to have committed an act other than those enumerated in section 20-509, Idaho Code, after the child became fourteen (14) years of age which would be a crime if committed by an adult; or

(c) An adult at the time of the filing of the petition is alleged to have committed an act prior to his having become eighteen (18) years of age which would be a felony if committed by an adult, and the court finds that the adult is not committable to an institution for people with intellectual disabilities or mental illness, is not treatable in any available institution or facility available to the state designed for the care and treatment of juveniles, or that the safety of the community requires the adult continue under restraint; or

(d) An adult already under the jurisdiction of the court is alleged to have committed a crime while an adult.

(2) A motion to waive jurisdiction under the juvenile corrections act and prosecute a juvenile under the criminal law may be made by the prosecuting attorney, the juvenile, or by motion of the court upon its own initiative. The motion shall be in writing and contain the grounds and reasons in support thereof.

(3) Upon the filing of a motion to waive jurisdiction under the juvenile corrections act, the court shall enter an order setting the motion for hearing at a time and date certain and shall order a full and complete investigation of the circumstances of the alleged offense to be conducted by county probation, or such other agency or investigation officer designated by the court.

(4) Upon setting the time for the hearing upon the motion to waive jurisdiction, the court shall give written notice of said hearing to the juvenile, and the parents, guardian or custodian of the juvenile, and the prosecuting attorney, at least ten (10) days before the date of the hearing, or a lesser period stipulated by the parties, and such notice shall inform the juvenile and the parents, guardian or custodian of the juvenile of their right to court appointed counsel. Service of the notice shall be made in the manner prescribed for service of a summons under section 20-512, Idaho Code.

(5) The hearing upon the motion to waive jurisdiction shall be held in the same manner as an evidentiary hearing upon the original petition and shall be made part of the record.

(6) If as a result of the hearing on the motion to waive jurisdiction the court shall determine that jurisdiction should not be waived, the petition shall be processed in the customary manner as a juvenile corrections act proceeding. However, in the event the court determines, as a result of the hearing, that juvenile corrections act jurisdiction should be waived and the juvenile should be prosecuted under the criminal laws of the state of Idaho, the court shall enter findings of fact and conclusions of law upon which it bases such decision together with a decree waiving juvenile corrections act jurisdiction and binding the juvenile over to the authorities for prosecution under the criminal laws of the state of Idaho.

(7) No motion to waive juvenile corrections act jurisdiction shall be recognized, considered, or heard by the court in the same case once the court has entered an order or decree in that case that said juvenile has come within the purview of the juvenile corrections act, and all subsequent proceedings after the decree finding the juvenile within the purview of the act must be under and pursuant to the act and not as a criminal proceeding.

(8) In considering whether or not to waive juvenile court jurisdiction over the juvenile, the juvenile court shall consider the following factors:

(a) The seriousness of the offense and whether the protection of the community requires isolation of the juvenile beyond that afforded by juvenile facilities;

(b) Whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner;

(c) Whether the alleged offense was against persons or property, greater weight being given to offenses against persons;

(d) The maturity of the juvenile as determined by considerations of his home, environment, emotional attitude, and pattern of living;

(e) The juvenile's record and previous history of contacts with the juvenile corrections system;

(f) The likelihood that the juvenile will develop competency and life skills to become a contributing member of the community by use of facilities and resources available to the court;

(g) The amount of weight to be given to each of the factors listed in subsection (8) of this section is discretionary with the court, and a determination that the juvenile is not a fit and proper subject to be dealt with under the juvenile court law may be based on any one (1) or a combination of the factors set forth within this section, which shall be recited in the order of waiver.

(9) If the court does not waive jurisdiction and order a juvenile or adult held for criminal proceedings, the court in a county other than the juvenile's or adult's home county, after entering a decree that the juvenile or adult is within the purview of this chapter, may certify the case for sentencing to the court of the county in which the juvenile offender or adult resides upon being notified that the receiving court is willing to accept transfer. In the event of a transfer, which should be made unless the court finds it contrary to the interest of the juvenile offender or adult, the jurisdiction of the receiving court shall attach to the same extent as if the court had original jurisdiction.

(10) Upon conviction of a juvenile offender held for adult criminal

proceedings under this section, the sentencing judge may, if a finding is made that adult sentencing measures would be inappropriate:

(a) Sentence the convicted person in accordance with the juvenile sentencing options set forth in this chapter; or

(b) Sentence the convicted person to the county jail or to the custody of the state board of correction but suspend the sentence or withhold judgment pursuant to section 19-2601, Idaho Code, and commit the defendant to the custody of the department of juvenile corrections for an indeterminate period of time in accordance with section 20-520(1)(r), Idaho Code. The court, in its discretion, may order that the suspended sentence or withheld judgment be conditioned upon the convicted person's full compliance with all reasonable program requirements of the department of juvenile corrections. Such a sentence may also set terms of probation, which may be served under the supervision of county juvenile probation. However, in no event may the total of the actual time spent by the convicted person in the custody of the department plus any adult sentence imposed by the court exceed the maximum period of imprisonment that could be imposed on an adult convicted of the same crime.

(c) If a convicted person is given a suspended sentence or withheld judgment conditioned upon the convicted person's compliance with all reasonable program requirements of the department pursuant to paragraph (b) of this subsection, and if the department reasonably believes that the convicted person is failing to comply with all reasonable program requirements, the department may petition the sentencing court to revoke the commitment to the department and transfer the convicted person to the county jail or to the custody of the state board of correction for the remainder of the sentence.

History.

I.C., § 16-1806, as added by 1977, ch. 165, § 2, p. 427; am. 1981, ch. 162, § 1, p. 284; am. and redesig. 1995, ch. 44, § 9, p. 65; am. 1995, ch. 47, § 1, p. 111; am. 1995, ch. 277, § 4, p. 925; am. 1997, ch. 82, § 1, p. 192; am. 1999, ch. 390, § 1, p. 1086; am. 2000, ch. 246, § 2, p. 686; am. 2007, ch. 308, § 2, p. 862; am. 2010, ch. 235, § 9, p. 542; am. 2012, ch. 19, § 8, p. 39.

Compiler's Notes. The 2007 amendment, by ch. 308, updated the second section reference in subsection (10)(b).

The 2010 amendment, by ch. 235, substituted "institution for people with intellectual disabilities or mental illness" for "institution for the mentally deficient or mentally ill" in paragraph (1)(c).

The 2012 amendment, by ch. 19, inserted "offender" following "juvenile" near the end of the first sentence and near the middle of the last sentence in subsection (9) and in the introductory paragraph of subsection (10).

Cited in: Judd v. State, 148 Idaho 22, 218 P.3d 1 (Ct. App. 2009).

Analysis

Discretion of court.
Waiver.
—Proper.

Discretion of Court.

A waiver decision will not be regarded as an abuse of discretion when the court: (1) perceived the issue as one of discretion; (2) acted within the boundaries of its discretion and consistently with the legal standards applicable to the available choices; and (3) reached its decision through an exercise of reason. State v. Doe (In re Doe), 147 Idaho 243, 207 P.3d 974 (2009).

Waiver.

—Proper.

District court did not abuse its discretion by waiving a 15-year-old defendant into adult court for trial, because each factor considered was supported by substantial and competent evidence, including the young age of the victim and the seriousness of the alleged crimes of attempted murder, battery, and forcible

penetration. State v. Doe (In re Doe), 147 Idaho 243, 207 P.3d 974 (2009).

20-509. Violent offenses, controlled substances violations near schools and offenders. — (1) Any juvenile, age fourteen (14) years to age eighteen (18) years, who is alleged to have committed any of the following crimes or any person under age fourteen (14) years who is alleged to have committed any of the following crimes and, pursuant to section 20-508, Idaho Code, has been ordered by the court to be held for adult criminal proceedings:

(a) Murder of any degree or attempted murder;

(b) Robbery;

(c) Rape as defined in section 18-6101, Idaho Code;

(d) Male rape as defined in section 18-6108, Idaho Code;

(e) Forcible sexual penetration by the use of a foreign object;

(f) Infamous crimes against nature, committed by force or violence;

(g) Mayhem;

(h) Assault or battery with the intent to commit any of the above serious felonies;

(i) A violation of the provisions of section 37-2732(a)(1)(A), (B) or (C), Idaho Code, when the violation occurred on or within one thousand (1,000) feet of the property of any public or private primary or secondary school, or in those portions of any building, park, stadium or other structure or grounds which were, at the time of the violation, being used for an activity sponsored by or through such a school;

(j) Arson in the first degree and aggravated arson;

shall be charged, arrested and proceeded against by complaint, indictment or information as an adult. All other felonies or misdemeanors charged in the complaint, indictment or information, which are based on the same act or transaction or on one (1) or more acts or transactions as the violent or controlled substances offense shall similarly be charged, arrested and proceeded against as an adult. Any juvenile proceeded against pursuant to this section shall be accorded all constitutional rights, including bail and trial by jury, and procedural safeguards as if that juvenile were an adult defendant.

(2) Once a juvenile has been formally charged or indicted pursuant to this section or has been transferred for criminal prosecution as an adult pursuant to the waiver provisions of section 20-508, Idaho Code, or this section, the juvenile shall be held in a county jail or other adult prison facility unless the court, after finding good cause, orders otherwise.

(3) Except as otherwise allowed by subsection (4) of this section, once a juvenile offender has been found to have committed the offense for which the juvenile offender was charged, indicted or transferred pursuant to this section or section 20-508, Idaho Code, or has been found guilty or pled guilty to a lesser offense or amended charge growing out of or included within the original charge, whether or not such lesser offense or amended charge is included within the acts enumerated in subsection (1) of this section, the juvenile offender shall thereafter be handled in every respect as an adult.

For any subsequent violation of Idaho law, the juvenile offender shall be handled in every respect as an adult.

(4) Upon the conviction of a juvenile offender pursuant to this section, the sentencing judge may, if a finding is made that adult sentencing measures would be inappropriate:

(a) Sentence the convicted person in accordance with the juvenile sentencing options set forth in this chapter; or

(b) Sentence the convicted person to the county jail or to the custody of the state board of correction but suspend the sentence or withhold judgment pursuant to section 19-2601, Idaho Code, and commit the defendant to the custody of the department of juvenile corrections for an indeterminate period of time in accordance with section 20-520(1)(r), Idaho Code. The court, in its discretion, may order that the suspended sentence or withheld judgment be conditioned upon the convicted person's full compliance with all reasonable program requirements of the department of juvenile corrections. Such a sentence may also set terms of probation, which may be served under the supervision of county juvenile probation. However, in no event may the total of the actual time spent by the convicted person in the custody of the department plus any adult sentence imposed by the court exceed the maximum period of imprisonment that could be imposed on an adult convicted of the same crime.

(c) If a convicted person is given a suspended sentence or withheld judgment conditioned upon the convicted person's compliance with all reasonable program requirements of the department pursuant to paragraph (b) of this subsection, and if the department reasonably believes that the convicted person is failing to comply with all reasonable program requirements, the department may petition the sentencing court to revoke the commitment to the department and transfer the convicted person to the county jail or to the custody of the state board of correction for the remainder of the sentence.

History.

I.C., § 16-1806A, as added by 1981, ch. 151, § 1, p. 262; am. 1984, ch. 81, § 6, p. 148; am. 1990, ch. 268, § 5, p. 755; am. and redesig. 1995, ch. 44, § 10, p. 65; am. 1995, ch. 46, § 1, p. 110; am. 1995, ch. 47, § 2, p. 111; am. 1995, ch. 48, § 1, p. 114; am. 1997, ch. 142, § 1, p. 413; am. 2000, ch. 73, § 1, p. 686; am. 2000, ch. 246, § 3, p. 155; am. 2007, ch. 308, § 3, p. 862; am. 2010, ch. 352, § 10, p. 920; am. 2012, ch. 19, § 9, p. 39.

Compiler's Notes. The 2007 amendment, by ch. 308, updated the second section reference in subsection (4)(b).

The 2010 amendment, by ch. 352, rewrote paragraph (1)(c), which read: "Rape, but excluding statutory rape"; and added paragraph (1)(d) and redesignated the subsequent paragraphs in subsection (1).

The 2012 amendment, by ch. 19, inserted "offender" following "juvenile" three times in subsection (3) and in the introductory paragraph of subsection (4).

ANALYSIS

Application.
Consideration of age.

Application.

District court did not abuse its discretion by waiving a 15-year-old defendant into adult court for trial, because each factor considered was supported by substantial and competent evidence, including the young age of the victim and the seriousness of the alleged crimes of attempted murder, battery, and forcible penetration. State v. Doe (In re Doe), 147 Idaho 243, 207 P.3d 974 (2009).

Consideration of Age.

When a juvenile who has reached the age of fourteen is charged with one of the enumerated crimes in this section, he or she will be automatically waived into adult court, focusing on the juvenile's age at the time he or she allegedly committed the offense. State v. Doe

(In re Doe), 147 Idaho 243, 207 P.3d 974 (2009).

20-510. Information — Investigation — Petition. — Any peace officer, any prosecuting attorney, or any authorized representative of the board of trustees of a school district of this state, having knowledge of a juvenile who is within the purview of this act may file a petition with the court in such form as may be required by the court, except a peace officer may also issue a citation for a curfew violation pursuant to section 20-549, Idaho Code. Said individual or agency shall be responsible for providing the evidence to support the allegations made in the petition, provided this in no way shall relieve peace officers from enforcement of the law as set forth in section 31-2227, Idaho Code. The court may make a preliminary inquiry to determine whether the interests of the public or of the juvenile require that further action be taken. Such inquiry may be made through the county probation officer or such other agent or investigation officer designated by the court. Thereupon, the court may make such informal adjustment as is practicable, or dismiss the petition, or set the matter for hearing. If an informal adjustment is made, it shall provide for full or partial restitution in the manner and form prescribed by the court when the offense involves loss or damage of property of another. A probation officer shall not file a petition unless the juvenile has previously been under the jurisdiction of the court. The petition and all subsequent court documents shall be entitled "In the interest of ..., a juvenile under eighteen (18) years of age." The petition may be made upon information and belief but it shall be made under oath. It shall set forth plainly: (1) the facts which bring the juvenile within the purview of this act; (2) the name, age, and residence of the juvenile; (3) the names and residences of his parents and spouse, if any; (4) the name and residence of his legal guardian, if there be one, or the person or persons having custody or control of the juvenile, or of the nearest known relative if no parent or guardian can be found. If any of the facts herein required are not known by the petitioner the petition shall so state.

Service of a petition upon the parents, legal guardian or person or persons having custody or control of the juvenile shall subject the parents, legal guardian or person or persons having custody or control of the juvenile to the provisions of this chapter. The petition shall inform the parents, legal guardian or other person legally obligated to care for and support the juvenile that service of the petition upon them shall make them subject to the provisions of this chapter.

History.

1963, ch. 319, § 7, p. 876; am. 1977, ch. 156, § 1, p. 399; am. 1989, ch. 155, § 4, p. 371; am. 1990, ch. 355, § 3, p. 958; am. and redesig. 1995, ch. 44, § 11, p. 65; am. 2000, ch. 74, § 1, p. 157; am. 2006, ch. 177, § 1, p. 544.

Compiler's Notes. The 2006 amendment, by ch. 177, substituted "may make" for "shall make" near the beginning of the third sentence.

Cited in: State v. Doe, 149 Idaho 353, 233 P.3d 1275 (2010).

20-511. Diversion or informal disposition of the petition. — (1) Prior to the filing of any petition under this act, the prosecuting attorney

may request a preliminary inquiry from the county probation officer to determine whether the interest of the public or the juvenile requires a formal court proceeding. If court action is not required, the prosecuting attorney may utilize the diversion process and refer the case directly to the county probation officer or a community-based diversion program for informal probation and counseling. If the diversion process is utilized pursuant to this subsection, then statements made by a juvenile in a diversion proceeding shall be inadmissible at an adjudicative proceeding on the underlying charge as substantive evidence of guilt. If community service is going to be utilized pursuant to this subsection, the prosecuting attorney shall collect a fee of sixty cents (60¢) per hour for each hour of community service work the juvenile is going to perform and remit the fee to the state insurance fund for the purpose of securing worker's compensation insurance for the juvenile offender performing community service. However, if a county is self-insured and provides worker's compensation insurance for persons performing community service pursuant to the provisions of this chapter, then remittance to the state insurance fund is not required.

(2) After the petition has been filed and where, at the admission or denial hearing, the juvenile offender admits to the allegations contained in the petition, the court may decide to make an informal adjustment of the petition. Informal adjustment includes, but is not limited to:

(a) Reprimand of the juvenile offender;

(b) Informal supervision with the probation department;

(c) Community service work;

(d) Restitution to the victim;

(e) Participation in a community-based diversion program.

(3) Information uniquely identifying the juvenile offender, the offense, and the type of program utilized shall be forwarded to the department. This information shall be maintained by the department in a statewide juvenile offender information system. Access to the information shall be controlled by the department, subject to the provisions of section 9-342, Idaho Code.

(4) Such informal adjustment of the petition shall be conducted in the manner prescribed by the Idaho juvenile rules. When an informal adjustment is made pursuant to this section and the juvenile offender is to perform community service work, the court shall assess the juvenile offender a fee of sixty cents (60¢) per hour for each hour of community service work the juvenile offender is to perform. This fee shall be remitted by the court to the state insurance fund for the purpose of securing worker's compensation insurance for the juvenile offender performing community service. However, if a county is self-insured and provides worker's compensation insurance for persons performing community service pursuant to the provisions of this chapter, then remittance to the state insurance fund is not required.

History.

I.C., § 16-1807A, as added by 1984, ch. 81, § 7, p. 148; am. 1994, ch. 233, § 3, p. 724; am. and redesig. 1995, ch. 44, § 12, p. 65; am. 1996, ch. 260, § 1, p. 856; am. 2009, ch. 154, § 1, p. 449; am. 2012, ch. 19, § 10, p. 39; am. 2013, ch. 222, § 1, p. 522.

Compiler's Notes. The 2009 amendment, by ch. 154, in subsection (1) and in the last paragraph, added the last sentence.

The 2012 amendment, by ch. 19, inserted "offender" following "juvenile" near the end of the third sentence in subsection (1), in the introductory paragraph of subsection (2) and

paragraph (2)(a), near the beginning of the first sentence of subsection (3), and in the second and third sentences of the last paragraph.

The 2013 amendment, by ch. 222, inserted the third sentence in subsection (1); and inserted the subsection (4) designation.

Alternate Sentencing.

Formal sentencing and informal adjustment are mutually exclusive pathways for resolving juvenile petitions. Therefore, the juvenile defendant is subject to either formal sentencing or informal adjustment. Once the magistrate court formally sentences a juvenile to two years' probation under § 20-520(1)(a), it has no authority to convert the judgment into an informal adjustment under this section and Idaho Juv. R. 11. State v. Doe, — Idaho —, 288 P.3d 805 (2012).

20-511A. Mental health assessments and plans of treatment. — (1) A judge of any court shall order the department of health and welfare to submit appropriate mental health assessments and a plan of treatment for the court's approval if at any stage of a proceeding under this chapter or the child protective act, chapter 16, title 16, Idaho Code, a judge has reason to believe, based upon the record and proceedings of the court or upon an affidavit of a party, state or county agency or any person having physical custody of the juvenile or juvenile offender, that he or she:

(a) Is suffering a substantial increase or persistence of a serious emotional disturbance as defined in section 16-2403, Idaho Code, which impairs his or her ability to comply with the orders and directives of the court, or which presents a risk to his or her safety or well-being or the safety of others; and

(b) Such condition has not been adequately addressed with supportive services and/or corrective measures previously provided to the juvenile, or the juvenile's needs with respect to the serious emotional disturbance are not being met or have not been met.

(2) The court may convene a screening team consisting of representatives from the department of health and welfare, county probation, local school officials, teen early intervention specialists as provided for under section 16-2404A, Idaho Code, the department of juvenile corrections and/or other agencies or persons designated by the court to review the plan of treatment and provide written recommendations to the court. Parents and guardians of the juvenile or juvenile offender, if available, shall be included in the screening team and consulted with regard to the plan of treatment.

(3) If the court, after receiving the mental health assessment and plan of treatment submitted by the department of health and welfare and any recommendations from the screening team, determines that additional information is necessary to determine whether the conditions set forth in subsections (1)(a) and (1)(b) of this section are present, or to determine an appropriate plan of treatment for the juvenile or juvenile offender, the court may order an evaluation and/or recommendations for treatment to be furnished by a psychiatrist, licensed physician or licensed psychologist, with the expenses of such evaluation and/or recommendations to be borne by the department of health and welfare.

(4) If the court concludes that the conditions set forth in subsections (1)(a) and (1)(b) of this section are present, the plan of treatment, as approved by the court, shall be entered into the record as an order of the court. The department of health and welfare shall provide mental health treatment as designated by the approved plan of treatment. If in-patient or residential

treatment is required as part of the plan of treatment, the court shall hold a hearing on whether to order such treatment unless the hearing is waived by the juvenile or juvenile offender and his or her parents or guardians. The court may order parents, legal guardians or custodians to adhere to the treatment designated in the plan of treatment. Representatives from the department of health and welfare, county probation, local school officials, teen early intervention specialists as provided for under section 16-2404A, Idaho Code, the department of juvenile corrections and/or other agencies or persons designated by the court shall attend case review hearings as scheduled by the court.

(5) All costs associated with assessment and treatment shall be the responsibility of the parents of the juvenile or juvenile offender according to their ability to pay based upon the sliding fee scale established pursuant to section 16-2433, Idaho Code. The financial obligation of the family shall be determined after consideration of all available payment and funding sources including title XIX of the social security act, as amended, all available third party sources, and parent resources according to any order for child support under chapter 10, title 32, Idaho Code. Services shall not be conditioned upon transfer of custody or parental rights.

History.

I.C., § 20-511A, as added by 2005, ch. 223, § 1, p. 699; am. 2007, ch. 309, § 4, p. 870; am. 2012, ch. 19, § 11, p. 39.

Compiler's Notes. Title XIX of the social security act, referred to in subsection (5), is codified as 42 U.S.C.S. § 1396 et seq.

The 2007 amendment, by ch. 309, in the first sentence in subsection (2) and the last sentence in subsection (4), inserted "teen early intervention specialists as provided for under section 16-2404A, Idaho Code."

The 2012 amendment, by ch. 19, inserted "or juvenile offender" following "juvenile" near the end of the introductory paragraph of subsection (1), in the last sentence of subsection (2), near the middle of subsection (3), near the end of the third sentence in subsection (4), and near the middle of the first sentence in subsection (5).

20-514. Representation at all stages of proceedings — Appointment of counsel — Waiver — Payment of cost of legal services. — (1) A juvenile who is being detained by a law enforcement officer or who is under formal charge of having committed, or who has been adjudicated for commission of, an act, omission or status that brings him under the purview of this act, is entitled:

(a) To be represented by an attorney to the same extent as an adult having his own counsel is so entitled pursuant to section 19-852, Idaho Code; and

(b) To be provided with the necessary services and facilities of representation, including investigation and other preparation.

(2) A juvenile who is entitled to be represented by an attorney under subsection (1) of this section is entitled:

(a) To be counseled and defended at all stages of the matter beginning with the earliest time and including revocation of probation or recommitment;

(b) To be represented in any appeal; and

(c) To be represented in any other post-adjudication or review proceeding that the attorney or the juvenile considers appropriate, unless the court in which the proceeding is brought determines that it is not a proceeding

that a reasonable person with adequate means would be willing to bring at his own expense and is therefore a frivolous proceeding.

(3) A juvenile's right to a benefit under subsection (1) or (2) of this section is unaffected by his having provided a similar benefit at his own expense, or by his having waived it, at an earlier stage.

(4) As early as possible in the proceedings, and in any event before the hearing of the petition on the merits, the juvenile and his parents, or guardian, shall be notified of their right to have counsel represent them. When it appears to the court that the juvenile or his parents or guardian desire counsel but are financially unable to pay for such legal services, the court shall appoint counsel to represent the juvenile and his parents or guardian; provided that in the event the court shall find that there is a conflict of interest between the interests of the juvenile and his parents or guardian, then the court shall appoint separate counsel for the juvenile, whether or not he or his parents or guardian are able to afford counsel, unless there is an intelligent waiver of the right of counsel by the juvenile, except as provided in subsection (6) of this section, and the court further determines that the best interest of the juvenile does not require the appointment of counsel. Counsel appointed under this section shall initially receive reasonable compensation from the county and the county shall have the right to be reimbursed for the cost thereof by the parents or guardian as hereafter provided in this section.

(5) Any waiver of the right to counsel by a juvenile under this act shall be made in writing, on the record and upon a finding by the court that:

(a) The juvenile has been informed of the right to counsel and the dangers and disadvantages of self-representation; and

(b) The waiver is intelligently made after consideration of the totality of the circumstances including, but not limited to:

(i) The age, maturity, intelligence, education, competency and comprehension of the juvenile;

(ii) The presence of the juvenile's parents or guardian;

(iii) The seriousness of the offense;

(iv) The collateral consequences of adjudication of the offense; and

(v) Whether the interests of the juvenile and his parents or guardian conflict.

(6) A juvenile shall not be permitted to waive the assistance to counsel in any of the following circumstances:

(a) If the juvenile is under the age of fourteen (14) years;

(b) In sentencing proceedings in which it has been recommended that the juvenile be committed to the legal custody of the department of juvenile corrections;

(c) In proceedings in which the juvenile is being adjudicated for commission of a crime of a sexual nature;

(d) In proceedings in which the juvenile is being adjudicated for commission of a felony;

(e) In hearings upon a motion to waive jurisdiction under the juvenile corrections act pursuant to section 20-508, Idaho Code;

(f) In hearings upon a motion to examine the juvenile to determine if he is competent to proceed pursuant to section 20-519A, Idaho Code; or

(g) In recommitment proceedings.

(7) Upon the entry of an order finding the juvenile is within the purview of this act, the parents, spouse or other person liable for the support of the juvenile, or the estates of such persons, and the estate of such juvenile, may be required by the court to reimburse the county for all or a portion of the cost of those legal services rendered to the juvenile by counsel appointed pursuant to this section that are related to the finding that the juvenile is within the purview of this act, unless the court finds such persons or estate to be indigent as defined in section 19-851(c), Idaho Code, and the requirement would impose a manifest hardship on those persons responsible for the juvenile or the estates. The current inability of those persons or entities to pay the reimbursement shall not, in and of itself, restrict the court from ordering reimbursement.

(8) The prosecuting attorney of each county may, on behalf of the county, recover payment or reimbursement, as the case may be, from each person or estate who is liable for the payment or reimbursement of the cost of court appointed counsel for the juvenile, as provided in subsection (7) of this section. In the event such payment or reimbursement is not made upon demand by the prosecuting attorney, suit may be brought against such persons by the prosecuting attorney within five (5) years after the date on which such counsel was appointed by the court.

History.

I.C., § 16-1809A, as added by 1976, ch. 246, § 2, p. 845; am. and redesig. 1995, ch. 44, § 15, p. 65; am. 2013, ch. 222, § 2, p. 522.

Compiler's Notes. The 2013 amendment, by ch. 222, added "Representation at all stages of proceedings" and "Waiver" in the section heading; added subsections (1), (2), (3), (5), and (6); redesignated former subsection (1) as subsection (4) and inserted "except as provided in subsection (6) of this section" in the second sentence in that subsection; redesignated former subsection (2) as subsection (7) and rewrote that subsection; and redesignated former subsection (3) as subsection (8), substituted "the juvenile, as provided in subsection (7) of this section" for "the juvenile, his parents or guardian under this section" at the end of the first sentence.

20-515. Failure to obey summons, a contempt — Warrant. — If any person summoned as herein provided shall, without reasonable cause, fail to appear, he may be proceeded against for contempt of court. In case the summons cannot be served, or the parties served fail to obey the same, or in any case when it shall be made to appear to the judge that the service will be ineffectual, or that the welfare of the juvenile offender requires that he be brought forthwith into the custody of the court, a warrant or a capias may be issued for the parent, guardian or the juvenile offender.

History.

1963, ch. 319, § 10, p. 876; am. and redesig. 1995, ch. 44, § 16, p. 65; am. 1997, ch. 76, § 2, p. 158; am. 2012, ch. 19, § 12, p. 39.

Compiler's Notes. The 2012 amendment, by ch. 19, twice inserted "offender" following "juvenile" in the last sentence.

20-516. Apprehension and release of juveniles — Detention. — (1) A peace officer may take a juvenile into custody, or a private citizen may detain a juvenile until the juvenile can be delivered forthwith into the custody of a peace officer, without order of the court:

(a) When he has reasonable cause to believe that the juvenile has

committed an act which would be a misdemeanor or felony if committed by an adult; or

(b) When in the presence of a peace officer or private citizen the juvenile has violated any local, state or federal law or municipal ordinance; or

(c) When there are reasonable grounds to believe the juvenile has committed a status offense. Status offenses are truancy, running away from or being beyond the control of parents, guardian, or legal custodian and curfew violations. Status offenders shall not be placed in any jail facility but instead may be placed in juvenile shelter care facilities, except in the case of runaways, when there is a specific detention request from a foreign jurisdiction to hold the juvenile pending transportation arrangements.

(2) A peace officer may take a juvenile into custody upon a written order or warrant signed by a judge. The judge may issue the order or warrant after finding that there is reasonable cause to believe that the juvenile comes within the purview of this chapter. Such taking into custody shall not be deemed an arrest. Jurisdiction of the court shall attach from the time the juvenile is taken into custody. When an officer takes a juvenile into custody, he shall notify the parent, guardian or custodian of the juvenile as soon as possible. Unless otherwise ordered by the court, or unless it appears to the officer taking the juvenile into custody that it is contrary to the welfare of society or the juvenile, such juvenile shall be released to the custody of his parent or other responsible adult upon written promise, signed by such person, to bring the juvenile to the court at a stated time. Such written promise shall be submitted to the court as soon as possible. If such person shall fail to produce the juvenile as agreed, or upon notice from the court, a summons for such person may be issued by the court and a warrant may be issued for apprehension of the juvenile.

(3) A juvenile taken into custody may be fingerprinted and photographed. Any fingerprints and photographs taken shall be forwarded as provided in subsection (8) of this section. If the court finds good cause it may order any fingerprints and photographs expunged.

(4) When a juvenile is not released he shall be taken forthwith to the court or place of detention specified by the court and then not later than twenty-four (24) hours, excluding Saturdays, Sundays and holidays, shall be brought before the court for a detention hearing to determine where the juvenile will be placed until the next hearing. Status offenders shall not be placed in any jail facility, but instead may be placed in juvenile shelter care facilities.

Placements may include, but are not limited to, the following:

(a) Parents of the juvenile;

(b) Relatives of the juvenile;

(c) Foster care;

(d) Group care;

(e) A juvenile detention center; or

(f) Community-based diversion programs.

(5) The person in charge of a detention center shall give immediate notice to the court that the juvenile is in his custody.

(6) No juvenile shall be held in detention longer than twenty-four (24) hours, exclusive of Saturdays, Sundays and holidays, unless a petition has been filed and the court has signed the detention order.

(7) As soon as a juvenile is detained by court order, his parents, guardian or legal custodian shall be informed by notice in writing on forms prescribed by the court that they may have a prompt hearing regarding release or detention.

(8) A juvenile taken into detention for an offense shall be fingerprinted and photographed. Fingerprints and photographs taken of juveniles shall be forwarded to the appropriate law enforcement agency and filed with the bureau of criminal identification of the Idaho state police which shall create a juvenile offender fingerprint file and enter the fingerprint data into the automated fingerprint identification system. If the court finds good cause it may order the fingerprints and photographs of the juvenile offender expunged.

(9) Peace officers' records of juveniles shall be kept separate from records of adults and shall be subject to disclosure according to chapter 3, title 9, Idaho Code.

History.

1963, ch. 319, § 11, p. 876; am. 1977, ch. 156, § 2, p. 399; am. 1982, ch. 126, § 1, p. 362; am. 1984, ch. 81, § 8, p. 148; am. 1990, ch. 213, § 11, p. 480; am. and redesig. 1995, ch. 44, § 17, p. 65; am. 1995, ch. 49, § 1, p. 115; am. 1995, ch. 277, § 5, p. 925; am. 1996, ch. 259, § 1, p. 854; am. 1996, ch. 379, § 2, p. 1284; am. 2000, ch. 469, § 54, p. 1450; am. 2012, ch. 19, § 13, p. 39.

Compiler's Notes. The 2012 amendment, by ch. 19, substituted "detention center" for "detention facility" in paragraph (4)(e) and in subsection (5); and, in subsection (8), deleted the former third and fourth sentences, which read, "The fingerprint data shall then be forwarded to the department to be maintained in a statewide juvenile offender information system. Access to the information in the juvenile offender system shall be controlled by the department, subject to the provisions of section 9-342, Idaho Code" and inserted "offender" following "juvenile" in the last two sentences.

20-517. Detention accommodations. — (1) The county commissioners shall provide a detention center for the detention of juvenile offenders to be conducted by the court, or, subject to the approval of the court, by other appropriate public agency, provided that such detention shall comply with the provisions of section 20-518, Idaho Code; or within the limits of funds provided by the county commissioners.

(2) For the purpose of carrying out the provisions of this section, the county commissioners may enter into contracts or agreements with public or private agencies, individuals, other counties, or the department of juvenile corrections which may include the expenditures of moneys outside the county boundaries. If the county in which the court is located has made an agreement with another governmental unit or agency located outside the county or the judicial district for the detention of juvenile offenders under this act, then any court in the county may order a juvenile offender detained outside of the county or outside of the judicial district in the detention center described in such agreement. All detention centers in this section shall be in compliance with section 20-518, Idaho Code, and IDAPA 11.11.02.

(3) The county wherein any court has entered an order for the detention of a juvenile offender outside of the county or outside of the judicial district

as provided by subsection (2) of this section shall pay all direct and indirect costs of the detention of the juvenile offender to the governmental unit or agency owning or operating the detention center in which the juvenile offender was detained. The amount of such cost may be determined by agreement between the county wherein the court entered the order of detention and the county or governmental unit or agency owning or operating such detention center.

(4) All moneys appropriated by the state for the planning and design of regional detention centers shall be administered and distributed by the director of the department of administration for the planning and design of regional detention centers in accordance with the requirements or directives of such appropriation. In administering such moneys, the director of the department of administration shall consult with the designated county officials of every county involved or affected by a proposed regional detention center and shall abide by the decision of the designated representatives of each of the counties so involved or affected.

History.

1963, ch. 319, § 12, p. 876; am. 1976, ch. 231, § 1, p. 819; am. 1978, ch. 57, § 1, p. 109; am. 1989, ch. 155, § 17, p. 371; am. and redesig. 1995, ch. 44, § 18, p. 65; am. 2012, ch. 19, § 14, p. 39.

Compiler's Notes. The 2012 amendment, by ch. 19, substituted "detention center" for "detention facility" and "detention centers" for "detention facilities" throughout the section; substituted "juvenile offenders" for "juveniles" in subsections (1) and (2); deleted "the court may arrange for the use of private homes for such detention, subject to the supervision of the court or other agency, or may arrange with any institution or agency to receive for temporary care and custody juveniles within the jurisdiction of the court, provided said private individual or agency facilities, except relatives of the juvenile, shall meet the licensing requirements as provided in this chapter for care of juveniles. Nothing herein shall prevent a jail facility from being utilized as a detention facility if it complies with the provisions of section 20-518, Idaho Code" from the end of subsection (1); in subsection (2), inserted "offender" following "juvenile" near the middle of the second sentence and added the last sentence; in subsection (3), inserted "offender" following "juvenile" three times in the first sentence and deleted "on a per day per juvenile basis" following "may be determined" near the beginning of the last sentence; and substituted "moneys" for "funds" twice in subsection (4).

20-518. Standards for detention. — The following shall be minimum standards for the detention of juveniles provided for in section 20-517, Idaho Code:

(1) Juvenile detention centers must be so constructed and/or maintained as to keep juveniles segregated from adult offenders with there to be no contact as to sight and/or sound between the two (2) classes. Those juveniles being treated as adult offenders pursuant to section 20-508 or 20-509, Idaho Code, may be housed in a juvenile detention center if so ordered by the court. Such juveniles may be housed in the general juvenile population without sight and sound separation if it is determined by the detention administration that the safety and security of the other juveniles would not be at risk.

(2) Juvenile detention centers must provide supervision and observation of juveniles sufficient to protect the physical and mental health of the detainees.

(3) Juveniles held in detention must be provided with at least three (3) adequate and nutritional meals per day.

(4) Juveniles held in detention must have access to reading materials on

a regular and systematic basis. Detained juveniles may receive books, newspapers and periodicals from any source including delivery to the detention center by family members, subject to the right of detention authorities to inspect and remove dangerous or harmful materials. Detention authorities may forbid the introduction into holding quarters of obscene books or periodicals.

(5) A visiting program shall be established in juvenile detention centers which will allow for family visits to each juvenile for at least two (2) hours each week.

(6) The juvenile detention center shall meet the standards and rules set forth in IDAPA 05.01.02 and IDAPA 11.11.02.

(7) Notwithstanding any other provision in this chapter, the minimum standards set forth herein shall not apply to any person who attains his or her eighteenth birthday prior to beginning or while in detention. When such person attains his or her eighteenth birthday, he or she shall be transferred from juvenile detention to the county jail.

History.

I.C., § 16-1812A, as added by 1978, ch. 57, § 2, p. 109; am. 1984, ch. 190, § 1, p. 439; am. 1989, ch. 155, § 18, p. 371; am. and redesig. 1995, ch. 44, § 19, p. 65; am. 2000, ch. 111, § 1, p. 248; am. 2011, ch. 7, § 1, p. 19; am. 2012, ch. 19, § 15, p. 39.

Compiler's Notes. The 2011 amendment, by ch. 7, in subsection (1), deleted "or those being treated as adult offenders under section 20-508 or 20-509, Idaho Code" following "adult offenders" in the first sentence and added the second and third sentences; substituted "juveniles" for "juvenile detainees" in subsection (2); substituted "Books, newspapers and periodicals from any source are subject" for "Detained juveniles may receive books, newspapers and periodicals from any source including delivery to the detention facilities by family members, subject" in the second sentence of subsection (4); and added subsection (6) and redesignated the subsequent subsection accordingly.

The 2012 amendment, by ch. 19, substituted "detention centers" for "detention facilities" and "detention center" for "detention facility" throughout the section; and, in subsection (4), rewrote the second sentence, which formerly read: "Books, newspapers and periodicals from any source are subject to the right of detention authorities to inspect and remove dangerous or harmful materials."

20-519A. Examination of juvenile — Competency — Appointment of psychiatrists, licensed psychologists or evaluation committee — Hospitalization — Report. — (1) At any time after the filing of a delinquency petition, a party may request in writing, or the court on its own motion may order, that the juvenile be examined to determine if the juvenile is competent to proceed. The request shall state the facts in support of the request for a competency examination. If, based upon the provisions of subsection (2) of this section, the court determines that there is good cause to believe that the juvenile is incompetent to proceed, then the court shall stay all proceedings and appoint at least one (1) examiner who shall be a qualified psychiatrist or licensed psychologist, or shall order the department of health and welfare to designate, within two (2) business days, at least one (1) examiner who shall be a qualified psychiatrist or licensed psychologist, to examine and report upon the mental condition of the juvenile. If there is reason to believe the basis for the juvenile's incompetency is due to a developmental disability, the court shall appoint an evaluation committee as defined in section 66-402, Idaho Code, or shall order the department of health and welfare to designate, within two (2) business days, an evaluation

committee, to examine and report upon the mental condition of the juvenile. The county shall be responsible for the cost of such evaluation subject to any reimbursement by the parents or other legal guardian of the juvenile. The court may order the parents or other legal guardian of the juvenile, unless indigent, to contribute to the costs of such examination in an amount to be set by the court after due notice to the parent or other legal guardian and the opportunity to be heard.

(2) A juvenile is competent to proceed if he or she has:

(a) A sufficient present ability to consult with his or her lawyer with a reasonable degree of rational understanding;

(b) A rational and factual understanding of the proceedings against him or her; and

(c) The capacity to assist in preparing his or her defense.

(3) Within three (3) business days of the appointment or designation of an examiner or an evaluation committee pursuant to the provisions of subsection (1) of this section, the examiner or evaluation committee shall determine the best location for the examination. The examination shall be conducted on an outpatient basis unless the court specifically finds that hospitalization or confinement of the juvenile for evaluation of competency is necessary, the juvenile is currently hospitalized in a psychiatric hospital or the juvenile is detained. The court may order the juvenile be confined to a hospital or other suitable facility, including detention as defined in section 20-502, Idaho Code, after a hearing to determine whether such confinement is necessary. Any such confinement shall be for the purpose of examination and shall be for a period not exceeding ten (10) days from the date of admission to the hospital or other suitable facility. The court, upon request, may make available to the examiner or the evaluation committee any court records relating to the juvenile.

(4) The examiner or evaluation committee may employ any method of examination that is accepted by the examiner's profession for the examination of juveniles alleged not to be competent, provided that such examination shall, at a minimum, include formal assessments of the juvenile in each of the following domains:

(a) Cognitive functioning;

(b) Adaptive functioning;

(c) Clinical functioning;

(d) Comprehension of relevant forensic issues; and

(e) Genuineness of effort.

(5) If at any time during the examination process, the examiner has reason to believe that the juvenile's alleged incompetency may be the result of a developmental disability and the matter has not already been referred to an evaluation committee for review, the examiner shall immediately notify the court. The court shall appoint an evaluation committee, or shall order the department of health and welfare to designate, within two (2) business days, an evaluation committee, to examine and report upon the mental condition of the juvenile. Conversely, if at any time during the examination process an evaluation committee has reason to believe the juvenile's alleged incompetency is not the result of a developmental disabil-

ity, the evaluation committee shall immediately notify the court so the examination can be completed by a qualified psychiatrist or licensed psychologist as set forth in subsection (1) of this section. The new examination and report shall be conducted within the time frames set forth in subsection (6) of this section.

(6) The examiner or evaluation committee shall submit a written report to the court within thirty (30) days of receipt of the appointment or designation. The report shall address the factors set forth in section 20-519B, Idaho Code. If the examiner or evaluation committee determines that the juvenile is incompetent to proceed, the report shall also include the following:

(a) The nature of the mental disease, defect, disability or other condition including chronological age that is the cause of the juvenile's incompetency;

(b) The juvenile's prognosis;

(c) Whether the examiner or evaluation committee believes the juvenile may be restored to competency and an estimated time period in which competence could be restored with treatment;

(d) If the juvenile may be restored to competency, the recommendations for restoration shall be the least restrictive alternative that is consistent with public safety;

(e) If the juvenile is not competent and there is no substantial probability that the juvenile can be restored to competency within six (6) months, a recommendation as to whether the juvenile meets the criteria set forth in section 16-2418, 66-329(11) or 66-406(11), Idaho Code, and identification of any other services recommended for the juvenile that are the least restrictive, community based and consistent with public safety; and

(f) No statements of the juvenile relating to the alleged offense shall be included in the report unless such statements are relevant to the examiner or evaluation committee's opinion regarding competency.

(7) The court, upon a finding of good cause, may alter the time frames for the designation of an examiner or evaluation committee, the completion of the examination or the completion of the report but shall ensure that the examination and competency determination occur as expeditiously as possible. The court may, upon a finding of good cause, vacate or continue the ninety (90) day restoration review hearing set forth in section 20-519C, Idaho Code.

(8) The report of the examination shall be filed in triplicate with the clerk of the court, who shall cause copies to be delivered to the prosecuting attorney and to counsel for the juvenile.

(9) If the examination cannot be conducted by reason of the unwillingness of the juvenile to participate, the report shall so state and shall include, if possible, an opinion as to whether such unwillingness of the juvenile was the result of age, mental disease, defect or disability and whether the examiner recommends that a second examiner be appointed to examine the juvenile.

History.
I.C., § 20-519A, as added by 2011, ch. 178, § 1, p. 505.

20-519B. Determination of competency of juvenile to proceed — Suspension of proceedings — Restoration order — Commitment. — (1) The court shall hold a hearing no later than thirty (30) days after the report of the examiner or evaluation committee is filed pursuant to the provisions of section 20-519A, Idaho Code. At the hearing, the court may receive as evidence the report of the examiner or evaluation committee. In considering whether the juvenile is competent to proceed, the court shall consider the following:

(a) A description of the nature, content, extent and results of the examination and any test that was conducted;

(b) The juvenile's capacity to understand the charges or allegations against the juvenile;

(c) The juvenile's capacity to understand the range and nature of possible penalties that may be imposed in the proceedings;

(d) The juvenile's capacity to understand the adversarial nature of the legal process;

(e) The juvenile's capacity to disclose to counsel facts pertinent to the proceedings at issue;

(f) Whether the juvenile is able to display appropriate courtroom behavior;

(g) Whether the juvenile is able to receive accurate impressions of the facts about which he or she is examined, is able to appreciate the meaning of an oath to tell the truth and has an understanding of the potential consequences of not telling the truth;

(h) The examiner's opinion as to the competency of the juvenile as defined in subsection (2) of section 20-519A, Idaho Code.

(2) The weight to be given to each of the factors listed in subsection (1) of this section is discretionary with the court and a determination that the juvenile is or is not competent to proceed may be based on any one (1) or a combination of such factors, which shall be recited in the court's order regarding competency.

(3) If neither the prosecuting attorney nor counsel for the juvenile contests the findings of the report of the examiner or evaluation committee, the court may make the determination on the basis of such report. If a party contests the findings of such report, they shall have the right to cross-examine the qualified psychiatrist or licensed psychologist who prepared and submitted the report and to offer evidence upon this issue. A finding of incompetency shall be based upon a preponderance of the evidence.

(4) If the court finds the juvenile is competent to proceed, the proceedings shall continue without delay.

(5) If the court initially finds that the juvenile is incompetent and there is not a substantial probability that the juvenile will be restored to competency within six (6) months, the court may stay or dismiss the matter. In determining whether to stay or dismiss the matter, the court shall consider all relevant factors including, but not limited to, the seriousness of

the alleged offense, resources available to the juvenile and any issues of public safety. Prior to a stay or dismissal of the matter, the court may convene a screening team consisting of representatives from the department of health and welfare, county probation, local school officials, and/or other agencies or persons designated by the court to develop a treatment plan for the juvenile. In developing such treatment plan, the recommendations contained in the competency examination shall be considered to ensure necessary services for the juvenile are put into place. Parents and guardians of the juvenile, if available, shall be included in the screening team and consulted with regard to the plan of treatment. If appropriate, the court may hold a hearing to determine whether proceedings under chapter 24, title 16, or chapter 3 or 4, title 66, Idaho Code, should be instituted. If such proceedings are initiated, the juvenile court may retain jurisdiction over said proceedings.

(6) If the court determines that the juvenile is incompetent to proceed, but may be restored to competency within six (6) months, the court shall order a plan of treatment to be developed by the department of health and welfare for the juvenile to undergo efforts at restoration to competency. The court may:

(a) Convene a restoration treatment team to make recommendations on a plan of treatment;

(b) Order any agencies that have treated or had custody of the juvenile to release any pertinent information or records to the department of health and welfare to be used in the development and implementation of the juvenile's restoration plan;

(c) Order the department of health and welfare, county probation, school officials and the department of juvenile corrections to release all pertinent information regarding the juvenile to the court, the department of health and welfare and any restoration treatment team to be used in the development and implementation of the juvenile's restoration plan;

(d) Require the parents or guardians of the juvenile, and where appropriate require the juvenile, to allow information pertinent to the restoration treatment plan be released to the department of health and welfare, the court and any restoration treatment team.

(7) If the court determines that the juvenile is incompetent to proceed, but may be restored to competency, the court may order a juvenile to participate in the competency restoration program as developed by the department of health and welfare. The purpose of the treatment or training is the restoration of the juvenile's competency to proceed. In determining the type and location of the competency restoration program and in designating a restoration provider, the department of health and welfare shall identify the least restrictive alternative that is consistent with public safety and consider whether inpatient treatment, residential care or secure confinement is necessary for program participation.

(a) An inpatient or residential or secure detention facility is only appropriate if all available less restrictive alternatives in community settings which would offer an opportunity for improvement of the juvenile's condition are inappropriate. If the department of health and welfare's

plan of restoration requires the juvenile be placed in an inpatient, residential or secure detention facility, the court shall hold a hearing on whether to order such placement unless the hearing is waived by the juvenile and the juvenile's parents or guardians. Juveniles charged with only a status offense or multiple status offenses shall not be held in a secure confinement or detention facility for restoration purposes.

(b) The department of health and welfare is responsible for determining the competency restoration program and services. All costs associated with restoration services shall be the responsibility of the parents of the juvenile according to their ability to pay based upon the sliding fee scale established pursuant to section 16-2433, Idaho Code. The financial obligation of the parents shall be determined after consideration of all available payment and funding sources including title XIX of the social security act, as amended, all available third party sources including funding available to the juvenile from other programs, grants or agencies and parent resources according to any order for child support under chapter 10, title 32, Idaho Code. Services shall not be conditioned upon transfer of custody of parental rights.

(8) If a juvenile is determined to be incompetent to proceed but may be restored to competency, the court shall retain jurisdiction of the juvenile for up to six (6) months. A restoration order issued pursuant to this section is valid for six (6) months from the date of the initial finding of incompetency or until one (1) of the following, whichever occurs first:

(a) The restoration program submits a report that the juvenile has become competent to proceed or that there is no substantial probability that the juvenile will regain competency within the period the order is valid;

(b) The charges are dismissed; or

(c) The juvenile reaches twenty-one (21) years of age.

(9) The court may extend the restoration order beyond six (6) months upon a showing of good cause. If the juvenile reaches twenty-one (21) years of age, the matter shall be dismissed. If the court concludes that there is no substantial probability that the juvenile will regain competency within the period the order is valid, then the provisions of subsection (5) of this section shall apply.

History.
I.C., § 20-519B, as added by 2011, ch. 178, § 2, p. 505.

Compiler's Notes. Title XIX of the social security act, referred to in paragraph (7)(b), is codified as 42 USCS § 1396 et seq.

20-519C. Restoration reports — Hearings. — (1) A report shall be filed by the restoration provider at least every ninety (90) days or whenever the restoration provider believes the juvenile is competent to proceed or whenever the restoration provider believes there is no substantial probability that the juvenile will regain competency before the expiration of the order to participate in a competency restoration program or fourteen (14) days before expiration of the restoration order.

(2) The court shall hold a review hearing regarding the progress towards competency at least every ninety (90) days while the juvenile participates in

a restoration program. The court may consider the restoration provider's report at the review hearing to assess the juvenile's progress and to determine whether restoration services should continue.

History.
I.C., § 20-519C, as added by 2011, ch. 178, § 3, p. 505.

20-519D. Admissibility of statements by examined or treated juvenile. — A statement made by a juvenile subject to a competency examination or restoration treatment pursuant to section 20-519A or 20-519B, Idaho Code, for the purposes of such examination or treatment shall not be admissible in evidence in any delinquency or criminal proceeding against the juvenile on any issue other than the juvenile's ability to assist counsel at trial or to form any specific intent which is an element of the crime charged, except that such statements of a juvenile to the examiner, evaluation committee or restoration provider as are relevant for impeachment purposes may be received subject to the usual rules of evidence governing matters of impeachment.

History.
I.C., § 20-519D, as added by 2011, ch. 178, § 4, p. 505.

20-520. Sentencing. — (1) Upon the entry of an order finding the juvenile offender is within the purview of the act, the court shall then hold a sentencing hearing in the manner prescribed by the Idaho juvenile rules to determine the sentence that will promote accountability, competency development and community protection. Prior to the entry of an order disposing of the case, other than an order of discharge or dismissal, the court may request and, if requested, shall receive a report containing the results of an inquiry into the home environment, past history, competency development, prevention or out of home placement services provided, and the social, physical and mental condition of the juvenile offender. The court shall not consider or review the report prior to the entry of an order of adjudication. Upon presentation and consideration of the report by the court, the court may proceed to sentence the juvenile offender as follows:

(a) Place the juvenile offender on formal probation for a period not to exceed three (3) years from the date of the order, except the court may place a juvenile offender on formal probation for a period not to exceed the juvenile offender's twenty-first birthday if the court finds that the juvenile offender has committed a crime of a sexual nature;

(b) Sentence the juvenile offender to detention pursuant to this act for a period not to exceed thirty (30) days for each act, omission or status which is prohibited by the federal, state, local or municipal law or ordinance by reason of minority only. The sentence shall not be executed unless the act, omission or status is in violation of section 922(x) of title 18, United States Code, or the court finds that the juvenile offender has violated the court's decree imposing the sentence as provided below.

If the court, after notice and hearing, finds that a juvenile offender has

violated the court's decree imposing the sentence under circumstances that bring the violation under the valid court order exception of the federal juvenile justice and delinquency prevention act of 1974, as amended, the court may commit the juvenile offender to detention for the period of detention previously imposed at sentencing;

(c) Commit the juvenile offender to a period of detention, pursuant to this act, for a period of time not to exceed ninety (90) days for each unlawful or criminal act the juvenile offender is found to have committed, if the unlawful or criminal act would be a misdemeanor if committed by an adult, or where the juvenile offender has been adjudicated as an habitual status offender;

(d) If the juvenile offender has committed an unlawful or criminal act which would be a felony if committed by an adult, the court may commit the juvenile offender to detention for a period not to exceed one hundred eighty (180) days for each unlawful or criminal act;

(e) Whenever a court commits a juvenile offender to a period of detention the juvenile detention center shall notify the school district where the detention center is located. No juvenile offender who is found to come within the purview of the act for the commission of a status offense shall be sentenced to detention in a jail facility unless an adjudication has been made that the juvenile offender is an habitual status offender;

(f) Commit the juvenile offender to detention and suspend the sentence on specific probationary conditions;

(g) The court may suspend or restrict the juvenile offender's driving privileges for such periods of time as the court deems necessary, and the court may take possession of the juvenile offender's driver's license. The juvenile offender may request restricted driving privileges during a period of suspension, which the court may allow if the juvenile offender shows by a preponderance of evidence that driving privileges are necessary for his employment or for family health needs;

(h) The court may order that the juvenile offender be examined or treated by a physician, surgeon, psychiatrist or psychologist, or that he receive other special care, or that he submit to an alcohol or drug evaluation, if needed, and for such purposes may place the juvenile offender in a hospital or other suitable facility;

(i) The court may order that the county probation office authorize a comprehensive substance abuse assessment of the juvenile offender. After receiving the comprehensive substance abuse assessment, and upon a finding by the court that treatment will provide a cost-effective means of achieving the sentencing goals of accountability, competency development and community protection, the court may order that the juvenile offender receive immediate treatment for substance abuse in keeping with a plan of treatment approved by the court. The initial cost of the assessment and treatment shall be borne by the department of juvenile corrections with funds allocated to the county probation office. The director of the department of juvenile corrections may promulgate rules consistent with this paragraph to establish a schedule of fees to be charged to parents by the county probation office for such services based upon the cost of the services and the ability of parents to pay;

(j) In support of an order under the provisions of this section, the court may make an additional order setting forth reasonable conditions to be complied with by the parents, the juvenile offender, his legal guardian or custodian, or any other person who has been made a party to the proceedings, including, but not limited to, restrictions on visitation by the parents or one (1) parent, restrictions on the juvenile offender's associates, occupation and other activities, and requirements to be observed by the parents, guardian or custodian;

(k) The court may make any other reasonable order which is in the best interest of the juvenile offender or is required for the protection of the public, except that no person under the age of eighteen (18) years may be committed to jail, prison or a secure facility which does not meet the standards set forth in section 20-518, Idaho Code, unless jurisdiction over the individual is in the process of being waived or has been waived pursuant to section 20-508 or 20-509, Idaho Code. The court may combine several of the above-listed modes of disposition where they are compatible;

(*l*) An order under the provisions of this section for probation or placement of a juvenile offender with an individual or an agency may provide a schedule for review of the case by the court;

(m) Order the proceeding expanded or altered to include consideration of the cause pursuant to chapter 16, title 16, Idaho Code;

(n) Order the case and all documents and records connected therewith transferred to the magistrate division of the district court for the county where the juvenile offender and/or parents reside if different than the county where the juvenile offender was charged and found to have committed the unlawful or criminal act, for the entry of a dispositional order;

(o) Order such other terms, conditions, care or treatment as appears to the court will best serve the interests of the juvenile offender and the community;

(p) The court shall assess a twenty dollar ($20.00) detention/probation training academy fee against the juvenile offender for every petition filed where there has been an adjudication that the juvenile offender is within the purview of this chapter. All moneys raised pursuant to this paragraph shall be transmitted by the court for deposit in the juvenile corrections fund which is created in section 20-542, Idaho Code;

(q) Additionally, the court shall assess a fee of sixty cents (60¢) per hour of community service against the juvenile offender for every petition filed where there has been an adjudication that the juvenile offender is within the purview of this chapter and the court is ordering community service. Such fee is to be remitted by the court to the state insurance fund for purposes of providing worker's compensation insurance for persons performing community service pursuant to this chapter. However, if a county is self-insured and provides worker's compensation insurance for persons performing community service pursuant to the provisions of this chapter, then remittance to the state insurance fund is not required;

(r) Commit the juvenile offender to the legal custody of the department of juvenile corrections for an indeterminate period of time not to exceed the

juvenile offender's nineteenth birthday, unless the custody review board determines that extended time in custody is necessary to address competency development, accountability, and community protection; provided however, that no juvenile offender shall remain in the custody of the department beyond the juvenile offender's twenty-first birthday. The department shall adopt rules implementing the custody review board and operations and procedures of such board;

(s) Notwithstanding any other provision of this section, a court may not commit a juvenile offender under the age of ten (10) years to a period of detention or to the custody of the department of juvenile corrections for placement in secure confinement.

(2) When an order is entered pursuant to this section, the juvenile offender shall be transported to the facility or program so designated by the court or the department, as applicable, by the sheriff of the county where the juvenile offender resides or is committed, or by an appointed agent. When committing a juvenile offender to the department, or another entity, the court shall at once forward to the department or entity a certified copy of the order of commitment.

(3) Unless the court determines that an order of restitution would be inappropriate or undesirable, it shall order the juvenile offender or his parents or both to pay restitution to or make whole any victim who suffers an economic loss as a result of the juvenile offender's conduct in accordance with the standards and requirements of sections 19-5304 and 19-5305, Idaho Code. The amount of restitution which may be ordered by the court shall not be subject to the limitations of section 6-210, Idaho Code. Court-ordered restitution shall be paid prior to any other court-ordered payments unless the court specifically orders otherwise. The clerk of the district court, with the approval of the administrative district judge, may use the procedures set forth in section 19-4708, Idaho Code, for the collection of the restitution.

(4) The court may order the juvenile offender's parents or custodian to pay the charges imposed by community programs ordered by the court for the juvenile offender, or the juvenile offender's parents or custodian.

(5) Any parent, legal guardian or custodian violating any order of the court entered against the person under the provisions of this chapter shall be subject to contempt proceedings under the provisions of chapter 6, title 7, Idaho Code.

History.

I.C., § 20-520, as added by 1996, ch. 301, § 2, p. 989; am. 1996, ch. 301, § 3, p. 989; am. 1996, ch. 359, § 2, p. 1207; am. 1997, ch. 76, § 1, p. 158; am. 1997, ch. 262, § 1, p. 746; am. 1999, ch. 155, § 1, p. 431; am. 2000, ch. 329, § 1, p. 1106; am. 2000, ch. 466, § 1, p. 1444; am. 2001, ch. 15, § 1, p. 17; am. 2002, ch. 73, § 1, p. 160; am. 2002, ch. 97, § 1, p. 265; am. 2002, ch. 309, § 1, p. 880; am. 2007, ch. 308, § 1, p. 862; am. 2008, ch. 41, § 1, p. 96; am. 2009, ch. 102, § 3, p. 312; am. 2009, ch. 154, § 2, p. 449; am. 2012, ch. 19, § 16, p. 39; am. 2012, ch. 257, § 6, p. 709.

Compiler's Notes. The Federal Juvenile Justice and Delinquency Prevention Act of 1974, referred to in subsection (1)(b) of this section, is compiled as 5 U.S.C., § 5108; 18 U.S.C., §§ 4351 to 4353, 5031 to 5042; 42 U.S.C., §§ 3701, 3723, 3733, 3758, 3772 to 3774, 3811 to 3814; 3821, 3883, 3888, 5601 to 5603, 5611 to 5619, 5631 to 5638, 5651 to 5662, 5671,5672, 5701, 5702, 5711 to 5716, 5731, 5751.

The 2007 amendment, by ch. 308, added subsection (1)(i) and made related redesignations.

The 2008 amendment, by ch. 41, substi-

tuted "unless the custody review board determines that extended time in custody is necessary" for "unless, in the opinion of the custody review board, extended time in custody is necessary" in subsection (1)(r).

This section was amended by two 2009 acts which appear to be compatible and have been compiled together.

The 2009 amendment, by ch. 102, added the last sentence in subsection (3).

The 2009 amendment, by ch. 154, added the last sentence in subsection (1)(q).

This section was amended by two 2012 acts which appear to be compatible and have been combined together.

The 2012 amendment, by ch. 19, substituted "juvenile offender" for "juvenile" and "juvenile offender's" for "juvenile's" throughout the section; in subsection (1), substituted "period of detention the juvenile detention center" for "period of detention it" and substituted "detention center" for "detention facility" in the first sentence of paragraph (e), and, in paragraph (i), substituted "county probation office authorize" for "department of health and welfare conduct" in the first sentence, substituted "department of juvenile corrections with funds allocated to the county probation office" for "department of health and welfare" at the end of the third sentence, substituted "juvenile corrections" for "health and welfare," and substituted "county probation office" for "department of health and welfare" in the last sentence.

The 2012 amendment, by ch. 257, deleted "legal guardian" following "parents" twice in subsection (4).

Analysis

Alternate sentencing.
Probation conditions.
Restitution awards.

Alternate Sentencing.

Formal sentencing and informal adjustment are mutually exclusive pathways for resolving juvenile petitions. Therefore, the juvenile defendant is subject to either formal sentencing or informal adjustment. Once the magistrate court formally sentences a juvenile to two years' probation under paragraph (1)(a), it has no authority to convert the judgment into an informal adjustment under § 20-511 and Idaho Juv. R. 11. State v. Doe, — Idaho —, 288 P.3d 805 (2012).

Probation Conditions.

When appellants' minor daughter was placed on probation for petit theft, the magistrate court violated appellants' Fourth Amendment rights by requiring appellants to submit to random urine testing for drugs; while the magistrate had the authority to impose the probation condition under subsection (1)(j) of this section, requiring appellants to undergo urinalysis testing constituted a search that was presumptively invalid without a warrant. State v. Doe, 149 Idaho 353, 233 P.3d 1275 (2010).

Restitution Awards.

Trial court did not abuse its discretion in awarding restitution for lost earnings in the amount of $3,300 to the father and $2,700 to the mother of a four-year-old child, upon whom a juvenile defendant was found guilty of committing lewd conduct, where the awards were based on each parent's gross earnings per day and days missed from work for matters related to the criminal action. State v. Doe (In re Doe), 140 Idaho 873, 103 P.3d 967 (Ct. App. 2004).

20-521. Habitual status offender. — (1) Any juvenile offender who has been adjudicated for commission of two (2) status offenses within twelve (12) months may be charged, petitioned and adjudicated as an habitual status offender for the third status offense committed within that twelve (12) month period.

(2) The court may utilize any dispositional alternative for an habitual status offender that is detailed in section 20-520, Idaho Code, except that the juvenile offender shall not be placed in an Idaho juvenile correctional center.

History.

I.C., § 16-1814A, as added by 1984, ch. 81, § 11, p. 148; am. and redesig. 1995, ch. 44, § 22, p. 65; am. 2012, ch. 19, § 17, p. 39.

Compiler's Notes. The 2012 amendment, by ch. 19, added the subsection designations; inserted "offender" following "juvenile" near the beginning of subsection (1); and substituted "juvenile offender shall not be placed in an Idaho juvenile correctional center" for "juvenile shall not be placed in the Idaho juvenile corrections center" at the end of subsection (2).

20-522. Jurisdiction over parents. — Whenever a juvenile offender is found to come under the purview of this chapter, the court shall have jurisdiction and authority to have the juvenile offender and the juvenile offender's parent(s), legal guardian or custodian sign a probationary contract with the court containing terms and conditions that the juvenile offender and the juvenile offender's parent(s), legal guardian or custodian must adhere to as a condition of the juvenile offender's probation. The probationary contract may provide that upon a violation or breach of the terms and conditions of the probationary contract, the juvenile offender's parent(s), legal guardian or custodian shall be liable to the court for a specific monetary sum not in excess of one thousand dollars ($1,000) for the breach of contract. All such moneys shall be payable to the court and shall be in addition to any other fines, penalties or other sanctions provided by law. Any moneys received by the court pursuant to this section shall be paid into the juvenile corrections fund created in section 20-542, Idaho Code. In lieu of or in addition to a monetary payment, the court may order that the parent(s), legal guardian or custodian attend parenting classes or undergo other treatment or counseling. Any person violating any order of the court entered under the provisions of this section shall be subject to contempt proceedings under the provisions of chapter 6, title 7, Idaho Code.

History.

I.C., § 16-1814B, as added by 1989, ch. 155, § 6, p. 371; am. and redesig. 1995, ch. 44, § 23, p. 65; am. 1995, ch. 277, § 7, p. 925; am. 1996, ch. 359, § 3, p. 1207; am. 2001, ch. 15, § 2, p. 17; am. 2012, ch. 19, § 18, p. 39.

Compiler's Notes. The 2012 amendment, by ch. 19, substituted "juvenile offender" for "juvenile" and "juvenile offender's" for "juvenile's" in the first and second sentences.

Analysis

Parental contract.
Probation conditions.

Parental Contract.

Appellate court reversed an order that required a father to sign a parental contract that required that he submit to random drug tests in conjunction with his son's probation. While the court had authority to order such a contract, it was not valid where the court indicated that the father had to sign the contract or be held in jail. State v. Watkins, 143 Idaho 217, 141 P.3d 1086 (2006).

Probation Conditions.

When appellants' minor daughter was placed on probation for petit theft, the magistrate had the authority under subsection (1)(i) of § 20-520 to impose probation conditions requiring appellants to submit to random urine testing for drugs. However, such testing would constitute an invalid search without a warrant. State v. Doe, 149 Idaho 353, 233 P.3d 1275 (2010).

20-524. Support of juvenile or juvenile offender — Reimbursement for costs incurred. — (1) Whenever a juvenile or juvenile offender is placed by the court in custody other than that of his or her parents or custodian, after due notice to the parent or other persons legally obligated to care for and support the juvenile or juvenile offender, and after a hearing, the court may order and decree that the parent or other legally obligated person shall pay in such a manner as the court may direct a reasonable sum that will cover in whole or in part the support and treatment of the juvenile or juvenile offender. If the parent or other legally obligated person willfully fails or refuses to pay such sum, the court may proceed against him for contempt, or the order may be filed and shall have the effect of a civil judgment.

(2) If the juvenile or juvenile offender is detained, the court may order that the parents of the juvenile or juvenile offender or other legally obligated person contribute to the costs of detention in an amount to be set by the court. The order may be filed and shall have the effect of a civil judgment. It is the intent of the legislature that foster parents or a parent or legal guardian receiving public assistance relating to that juvenile or juvenile offender should not benefit from the continued receipt of payments or public assistance from any state or federal agency while the juvenile or juvenile offender is detained. The department of health and welfare is directed to promulgate a rule implementing this intent.

History.

I.C., § 16-1815, as added by 1984, ch. 81, § 12, p. 148; am. 1986, ch. 222, § 9, p. 593; am. 1990, ch. 361, § 5, p. 973; am. 1992, ch. 194, § 1, p. 603; am. and redesig. 1995, ch. 44, § 25, p. 65; am. 1995, ch. 354, § 1, p. 1198; am. 1997, ch. 82, § 2, p. 192; am. 1998, ch. 292, § 4, p. 928; am. 2004, ch. 50, § 3, p. 236; am. 2012, ch. 19, § 19, p. 39; am. 2012, ch. 257, § 7, p. 709.

Compiler's Notes. This section was amended by two 2012 acts which appear to be compatible and have been compiled together.

The 2012 amendment, by ch. 19, added "or juvenile offender" at the end of the section heading; inserted "or juvenile offender" following "juvenile" throughout the section; and deleted former subsections (3) and (4), which read: "(3) All child support orders shall notify the obligor that the order will be enforced by income withholding pursuant to chapter 12, title 32, Idaho Code. (4) Failure to include these provisions does not affect the validity of the support order or decree. The court shall require that the social security numbers of both the obligor and obligee be included in the order or decree."

The 2012 amendment, by ch. 257, deleted "guardian" following "parent" or "parents" twice in subsection (1) and substituted "that the parents of the juvenile or other legally obligated person" for "parents or other legal guardian of the juvenile" in subsection (2).

Notice.

Magistrate's order that defendant juvenile's mother reimburse county for the costs of defendant's detention was reversed on appeal, because meaningful, constitutional notice was not provided to defendant's mother. While it appeared that defendant's mother had notice of her son's disposition hearing, nothing in the record indicated that she had prior notice that detention costs could be imposed upon her at that hearing. In re Doe, 147 Idaho 542, 211 P.3d 787 (Ct. App. 2009).

Due process requires meaningful notice and opportunity to be heard before a court may enter an order for payment of detention costs under subsection (2). In re Doe, 147 Idaho 542, 211 P.3d 787 (Ct. App. 2009).

20-524A. Department's payment of detention costs. — If the juvenile offender is committed to the custody of the department of juvenile corrections pursuant to chapter 5, title 20, Idaho Code, the department shall reimburse the county for the period of time in excess of five (5) calendar days during which the juvenile offender is housed at a detention center. This time period shall begin to run on the first business day the department receives a copy of the order of commitment, executed by the court. Orders received by the department after 3 o'clock p.m., mountain standard time, on a business day, will be considered to have been received the next business day. Facsimile transmissions of the order are acceptable.

History.

I.C., § 20-524A, as added by 2004, ch. 50, § 4, p. 236; am. 2012, ch. 19, § 20, p. 39.

Compiler's Notes. The 2012 amendment, by ch. 19, inserted "Department's" at the beginning of the section heading; and, in the first sentence, inserted "offender" following "juvenile" near the beginning and near the end and substituted "detention center" for "detention facility" at the end.

20-525. Records — Privileged information. — (1) The court shall

maintain records of all cases brought before it. In proceedings under this act the following juvenile courtroom proceedings and records shall be open to the public: all proceedings against a juvenile offender of the age of fourteen (14) years or older and who is petitioned or charged with an offense which would be a felony if committed by an adult including the court docket, petitions, complaints, information, arraignments, trials, sentencings, probation violation hearings and dispositions, motions and other papers filed in any case in any district; transcripts of testimony taken by the court; and findings, verdicts, judgments, orders, decrees and other papers filed in proceedings before the court of any district.

(2) Juvenile courtroom proceedings and records shall remain confidential when the court and the prosecutor agree extraordinary circumstances exist that justify records of a juvenile offender of the age of fourteen (14) years or older and who is petitioned or charged with an offense which would be a felony if committed by an adult should remain confidential because it is in the best interest of the juvenile offender.

(3) In proceedings under this act the following records and court proceedings of juvenile offenders of the age of thirteen (13) years or younger shall not be withheld from public inspection, except on court order, which order must be made in writing in each case: the court docket, petitions, complaints, information, arraignments, trials, sentencings, probation violation hearings and dispositions, motions and other papers filed in any case in any district; transcripts of testimony taken by the court; and findings, verdicts, judgments, orders, decrees and other papers filed in proceedings before the court of any district.

(4) These records shall be open to inspection according to chapter 3, title 9, Idaho Code. All information obtained and social records prepared in the discharge of official duty by an employee of the court shall be subject to disclosure according to chapter 3, title 9, Idaho Code.

(5) The victim of misconduct shall always be entitled to the name of the juvenile offender involved, the name of the juvenile offender's parents or guardian, and their addresses and telephone numbers, if available in the records of the court.

(6) Notwithstanding the other provisions of this act and notwithstanding any order entered pursuant hereto, nothing in this act shall prohibit the exchange of records created pursuant to this act between prosecuting attorneys or courts in this state.

History.

1963, ch. 319, § 16, p. 876; am. 1977, ch. 156, § 4, p. 399; am. 1990, ch. 213, § 12, p. 480; 1990, ch. 245, § 2, p. 696; am. 1994, ch. 326, § 2, p. 1046; am. and redesig. 1995, ch. 44, § 26, p. 65; am. 1997, ch. 258, § 1, p. 732; am. 2012, ch. 19, § 21, p. 39.

Compiler's Notes. The 2012 amendment, by ch. 19, inserted "offender" following "juvenile" in subsection (1), twice in subsection (2), and in subsection (5); substituted "juvenile offenders" for "juveniles" in subsection (3); and substituted "juvenile offender's" for "juvenile's" in subsection (5).

20-525A. Expungement of record — Hearing — Findings necessary — Special index — Effect of order. — (1) Any person who has been adjudicated in a case under this act and found to be within the purview of the act for having committed a felony offense or having been committed to

the department of juvenile corrections may, after the expiration of five (5) years from the date of termination of the continuing jurisdiction of the court, or, in case the juvenile offender was committed to the juvenile correctional center, five (5) years from the date of his release from the juvenile correctional center, or after reaching age eighteen (18) years, whichever occurs last, petition the court for the expungement of his record. Upon the filing of the petition, the court shall set a date for a hearing and shall notify the prosecuting attorney of the pendency of the petition and of the date of the hearing. The prosecuting attorney and any other person who may have relevant information about the petitioner may testify at the hearing.

(2) Any person who has been adjudicated in a case under this act and found to be within the purview of the act for having committed misdemeanor or status offenses only and not having been committed to the department of juvenile corrections may, after the expiration of one (1) year from the date of termination of the continuing jurisdiction of the court or after reaching age eighteen (18) years, whichever occurs later, petition the court for the expungement of his record. Upon the filing of the petition, the court shall set a date for a hearing and shall notify the prosecuting attorney of the pendency of the petition and the date of the hearing. The prosecuting attorney and any other person who may have relevant information about the petitioner may testify at the hearing.

(3) In any case where the prosecuting attorney has elected to utilize the diversion process or the court orders an informal adjustment pursuant to section 20-511, Idaho Code, the person may, after the expiration of one (1) year from the date of termination of the continuing jurisdiction of the court or after reaching age eighteen (18) years, whichever occurs later, petition the court for the expungement of his record. Upon the filing of the petition, the court shall set a date for a hearing and shall notify the prosecuting attorney of the pendency of the petition and the date of the hearing. The prosecuting attorney and any other person who may have relevant information about the petitioner may testify at the hearing.

(4) The court may not expunge a conviction for any of the following crimes from a juvenile offender's record:

(a) Administering poison with intent to kill (18-4014, Idaho Code);

(b) Aggravated battery (18-907, Idaho Code);

(c) Armed robbery (chapter 65, title 18, Idaho Code);

(d) Arson (chapter 8, title 18, Idaho Code);

(e) Assault with intent to commit a serious felony (18-909, Idaho Code);

(f) Assault with intent to murder (18-4015, Idaho Code);

(g) Assault or battery upon certain personnel, felony (18-915, Idaho Code);

(h) Forcible sexual penetration by use of a foreign object (18-6608, Idaho Code);

(i) Infamous crime against nature, committed by force or violence (18-6605, Idaho Code);

(j) Injury to child, felony (18-1501, Idaho Code);

(k) Kidnapping (18-4501, Idaho Code);

(*l*) Murder of any degree (18-4001 and 18-4003, Idaho Code);

(m) Rape, excluding statutory rape (18-6101 and 18-6108, Idaho Code);
(n) Ritualized abuse of a child (18-1506A, Idaho Code);
(o) Sexual exploitation of a child (18-1507, Idaho Code);
(p) Unlawful use of destructive device or bomb (18-3320, Idaho Code);
(q) Voluntary manslaughter (18-4006 1., Idaho Code);
(r) A violation of the provisions of section 37-2732(a)(1)(A), (B) or (C), Idaho Code, when the violation occurred on or within one thousand (1,000) feet of the property of any public or private primary or secondary school, or in those portions of any building, park, stadium or other structure or grounds which were, at the time of the violation, being used for an activity sponsored by or through such a school;
(s) A violation of the provisions of section 37-2732B, Idaho Code, related to drug trafficking or manufacturing of illegal drugs.

(5) If the court finds after hearing that the petitioner has not been adjudicated as a juvenile offender for any of the crimes identified in subsection (4) of this section, and has not been convicted of a felony, or of a misdemeanor wherein violence toward another person was attempted or committed since the termination of the court's jurisdiction or his release from the juvenile correctional center, and that no proceeding involving such felony or misdemeanor is pending or being instituted against him, and if the court further finds to its satisfaction that the petitioner has been held accountable, is developing life skills necessary to become a contributing member of the community and that the expungement of the petitioner's record will not compromise public safety, it shall order all records in the petitioner's case in the custody of the court and all such records, including law enforcement investigatory reports and fingerprint records, in the custody of any other agency or official sealed; and shall further order all references to said adjudication, diversion or informal adjustment removed from all indices and from all other records available to the public. However, a special index of the expungement proceedings and records shall be kept by the court ordering expungement, which index shall not be available to the public and shall be revealed only upon order of a court of competent jurisdiction. Copies of the order shall be sent to each agency or official named in the order. Upon the entry of the order the proceedings in the petitioner's case shall be deemed never to have occurred and the petitioner may properly reply accordingly upon any inquiry in the matter. Inspection of the records may thereafter be permitted only by the court upon petition by the person who is the subject of the records or by any other court of competent jurisdiction, and only to persons named in the petition.

History.

I.C., § 16-1618A, as added by 1969, ch. 299, § 1, p. 899; am. and redesig. 1995, ch. 277, § 9, p. 925; am. 1999, ch. 248, § 1, p. 636; am. 2004, ch. 160, § 1, p. 525; am. 2005, ch. 92, § 1, p. 311; am. 2012, ch. 19, § 22, p. 39.

Compiler's Notes. The 2012 amendment, by ch. 19, in the first sentence of subsection (1), substituted "juvenile offender was committed to the juvenile correctional center" for "juvenile was committed to the juvenile corrections center", and substituted "juvenile correctional center" for "juvenile corrections center"; substituted "juvenile offender's" for "juvenile's" in the introductory paragraph of subsection (4); and, in the first sentence of subsection (5), inserted "offender" following "juvenile" and substituted "juvenile correctional center" for "juvenile corrections center."

Cited in: United States v. Bays, 589 F.3d 1035 (9th Cir. 2009).

20-526. Encouraging violations. — Any person who by any act or neglect encourages, aids or causes a juvenile to come within the purview or jurisdiction of this chapter, or who after notice that the driving privileges of the juvenile offender have been suspended or restricted under the provisions of this chapter knowingly permits or encourages said juvenile offender to operate a motor vehicle in violation of such suspension or restriction, shall be guilty of a misdemeanor. The court may impose conditions upon any person found guilty under this section, and so long as such person shall comply therewith to the satisfaction of the court, the sentence imposed may be suspended.

History.
1963, ch. 319, § 17, p. 876; am. 1977, ch. 156, § 5, p. 399; am. and redesig. 1995, ch. 44, § 27, p. 65; am. 2012, ch. 19, § 23, p. 39.

Compiler's Notes. The 2012 amendment, by ch. 19, twice inserted "offender" following "juvenile" in the first sentence.

20-528. Appeals. — All orders or final judgments made by any court in matters affecting a juvenile offender within the purview of this act may be appealed by the juvenile offender or the state. A decision by the court pursuant to section 20-508, Idaho Code, not to waive jurisdiction under this act over the juvenile offender may be appealed by the state. Appeals shall be reviewed as provided by the appellate rules of the supreme court of Idaho, except no undertaking shall be required. Upon filing of the notice of appeal, the district court shall take jurisdiction of the case and if the juvenile offender is in detention shall promptly hold a hearing after the filing of a request to determine whether the juvenile offender shall remain in detention.

History.
1963, ch. 319, § 19, p. 876; am. 1971, ch. 170, § 3, p. 805; am. 1980, ch. 134, § 1, p. 293; am. and redesig. 1995, ch. 44, § 29, p. 65; am. 1997, ch. 54, § 1, p. 92; am. 2012, ch. 19, § 24, p. 39.

Compiler's Notes. The 2012 amendment, by ch. 19, inserted "offender" following "juvenile" throughout the section.

20-530. Reassessment of committed juvenile offenders — Records — Failure to reassess. — (1) The department shall make periodic reassessments of all juvenile offenders committed to it for the purpose of determining whether existing orders and dispositions in individual cases should be modified or continued in force. Assessments may be made as frequently as the department considers desirable and shall be made with respect to every juvenile offender at intervals not exceeding one (1) year. Reports of periodic reassessments made pursuant to this section shall be filed with the court from which the juvenile offender was committed.

(2) The department shall keep written records of assessments, prognosis, and all orders concerning disposition or treatment of every juvenile offender committed to it.

(3) Failure of the department to assess a committed juvenile offender or to reassess him within one (1) year of a previous assessment shall not of itself entitle the juvenile offender to discharge from the control of the department but shall entitle him to petition the committing court for an

order of discharge and the court shall discharge him unless the department satisfies the court of the need for further control.

History.
1963, ch. 319, § 23, p. 876; am. and redesig. 1995, ch. 44, § 32, p. 65; am. 2012, ch. 19, § 25, p. 39.

Compiler's Notes. The 2012 amendment, by ch. 19, inserted "offender" following "juvenile" throughout the section and substituted "juvenile offenders" for "juveniles" in the section heading and near the beginning of subsection (1).

20-531. Secure facilities. — (1) The department shall maintain and operate secure facilities for the custody of juvenile offenders who pose a danger of serious bodily harm to others or who have engaged in a pattern of serious criminal offenses, and who cannot be controlled in a less secure setting.

(2) The department shall provide or make available to juvenile offenders in secure facilities, instruction appropriate to the age, needs and range of abilities of the juvenile offenders. An assessment shall be made of each juvenile offender at the secure facility to determine abilities, learning disabilities, interests, attitudes and similar matters. Training in the development of competency and life skills designed to assist the juvenile offender in operating effectively within and becoming a contributing member of the community shall be provided. Prevocational education shall be provided to acquaint juvenile offenders with vocations, their requirements and opportunities.

(3) The department shall place juvenile offenders committed to the department in a state or privately operated secure facility that provides humane care and developmental opportunities for the juvenile offender while promoting accountability and community protection.

(4) The department shall adopt standards, policies and procedures for the regulation and operation of secure facilities. Such standards, policies and procedures shall not be inconsistent with law. Policies shall be promulgated as rules in compliance with chapter 52, title 67, Idaho Code.

History.
I.C., § 16-1827, as added by 1989, ch. 155, § 9, p. 371; am. and redesig. 1995, ch. 44, § 34, p. 65; am. 2012, ch. 19, § 26, p. 39.

Compiler's Notes. The 2012 amendment, by ch. 19, in subsection (2), substituted "juvenile offenders" for "juveniles" at the end of the first sentence and inserted "offender" following "juvenile" in the second and third sentences.

20-532. Term of commitment — Review after commitment. — A juvenile offender committed to a secure facility shall remain until the juvenile offender reaches nineteen (19) years of age, is retained for extended custody pursuant to section 20-520(1)(r), Idaho Code, or is released or discharged. A juvenile offender committed to a secure facility shall appear before the department within ninety (90) days after commitment, for review of treatment plans.

History.
I.C., § 16-1828, as added by 1989, ch. 155, § 9, p. 371; am. and redesig. 1995, ch. 44, § 35, p. 65; am. 2002, ch. 309, § 2, p. 880; am. 2007, ch. 308, § 4, p. 862; am. 2012, ch. 19, § 27, p. 39.

Compiler's Notes. The 2007 amendment, by ch. 308, updated the section reference.

The 2012 amendment, by ch. 19, inserted "juvenile" preceding "offender" near the middle of the first sentence.

20-532A. Order for apprehension and detention of escapees from custody. — Upon a finding by the Idaho department of juvenile corrections that a juvenile offender in the custody of the department has escaped from custody, a written order signed by the director or his designee shall be a sufficient order for detention for any law enforcement officer to apprehend and take into custody such person. It is hereby made the duty of all sheriffs, police, constables, parole officers, prison officials and other peace officers, to execute such order. From and after the issuance of the detention order and until taken into custody, the escapee shall be considered a fugitive from justice. Upon apprehension, the juvenile offender shall be detained in the closest available detention center and shall thereafter be transported by the department as soon as possible or, at the discretion of the detaining authority, the juvenile offender may be transported directly by that authority to the department's nearest regional facility.

History.

I.C., § 20-532A, as added by 2000, ch. 105, § 1, p. 234; am. 2004, ch. 50, § 5, p. 236; am. 2012, ch. 19, § 28, p. 39.

Compiler's Notes. The 2012 amendment, by ch. 19, inserted "offender" following "juvenile" near the middle of the first sentence and twice in the last sentence.

20-533. Release from custody of the department. — (1) The department shall determine an appropriate date for release of the juvenile offender from the custody of the department, based upon guidelines established by the department. The department shall review and update policy guidelines annually.

(2) Juvenile offenders may be released to their own home, to a residential community-based program, to a nonresidential community-based treatment program, to an approved independent living setting, or to other appropriate residences, but shall remain on probation until the probation is terminated by the court. Following the release of a juvenile offender, the court may conduct a hearing to review the juvenile offender's conditions of probation and determine whether existing conditions should be amended or eliminated or additional conditions imposed.

(3) County probation officers shall enforce probation conditions and supervise juvenile offenders while on probation. As authorized by court order, probation officers may establish additional reasonable conditions of probation with which the juvenile offender must comply. The juvenile offender may move for a hearing before the court to contest any conditions imposed by the probation officer. If the probation officer establishes additional conditions of probation, the probation officer shall advise the juvenile offender at the time such additional conditions are imposed of the juvenile offender's right to move the court for a hearing to contest those conditions.

(4) When the department is considering release of a juvenile offender committed to the department for confinement, the department shall notify the prosecuting attorney of the county from which the juvenile offender was committed to confinement, the judge whose order caused the juvenile

offender to be committed to confinement and the victims of the juvenile offender's unlawful conduct.

History.

I.C., § 16-1829, as added by 1989, ch. 155, § 9, p. 371; am. and redesig. 1995, ch. 44, § 36, p. 65; am. 2012, ch. 19, § 29, p. 39.

Compiler's Notes. The 2012 amendment, by ch. 19, in subsection (2), substituted "juvenile offender's" for "juvenile's" in the last sentence; and, in subsection (3), inserted "offender" following "juvenile" near the beginning of the third sentence and near the middle of the last sentence and substituted "juvenile offender's" for "juvenile's" near the end of the last sentence.

Cited in: State v. Doe (In re Doe), 147 Idaho 243, 207 P.3d 974 (2009); State v. Doe, 149 Idaho 353, 233 P.3d 1275 (2010).

20-533A. Compliance with open meeting law — Executive sessions authorized — Confidentiality of records. — (1) All meetings of the custody review board of the Idaho department of juvenile corrections shall be held in accordance with the open meeting law as provided in chapter 23, title 67, Idaho Code, provided however:

(a) Deliberations and decisions of the board concerning whether or not a juvenile offender shall be held in custody of the Idaho department of juvenile corrections for an extended period of time past his or her nineteenth birthday may be made in executive session; and

(b) Votes of individual members in custody decisions shall not be made public, provided that the board shall maintain a record of the votes of the individual members as required in subsection (2) of this section.

(2) A written record of the vote to retain the juvenile offender in custody for an extended period of time by each board member in each case reviewed by that member shall be produced by the board. Such record shall be kept confidential and privileged from disclosure, provided the record shall be made available upon request to the governor, the chairman of the senate judiciary and rules committee and the chairman of the house of representatives judiciary, rules and administration committee for all lawful purposes.

(3) A board member or employee of the Idaho department of juvenile corrections who distributes to any person not specifically listed in this section any hearing information or records that are legally required to be kept confidential shall be guilty of a misdemeanor.

(4) Nothing contained in this section shall prevent any person from obtaining the results of any action by the board or director of the Idaho department of juvenile corrections without reference to the manner in which any member voted, and the board shall make such information public unless doing so would violate public records laws.

(5) Nothing contained in this section shall prevent the director, designated staff of the director, the governor, the chairman of the senate judiciary and rules committee or the chairman of the house of representatives judiciary, rules and administration committee from attending any meeting, including any executive session, of the custody review board.

History.
I.C., § 20-533A, as added by 2003, ch. 164, § 2, p. 462; am. 2012, ch. 19, § 30, p. 39.

Compiler's Notes. The 2012 amendment, by ch. 19, inserted "offender" following "juvenile" in paragraph (1)(a) and in the first sentence of subsection (2).

20-535. Review of programs for juvenile offenders — Certification. — The department shall annually review all state operated or state contracted programs which provide services to juvenile offenders and certify compliance with standards provided by the department. Written reviews shall be provided to the managers of those programs. Based upon policies established by the department, those programs which are unable or unwilling to comply with approved standards may not be certified. Any person owning or operating a private facility who willfully fails to comply with the standards established by the department shall be guilty of a misdemeanor.

History.
I.C., § 16-1837, as added by 1989, ch. 155, § 9, p. 371; am. and redesig. 1995, ch. 44, § 39, p. 65; am. 2012, ch. 19, § 31, p. 39.

Compiler's Notes. The 2012 amendment, by ch. 19, substituted "juvenile offenders" for "juveniles" in the section heading.

20-538. Restitution to victims of juvenile offenders — Duties of department.

A.L.R. Mandatory Victims Restitution Act — Constitutional issues. 20 A.L.R. Fed. 2d 239.

20-539A. Distribution and reporting requirements for state, other public and private contract facilities. — Each facility housing juvenile offenders in department custody, whether a state, other public or private contract facility, shall comply with the following requirements for disbursement and reporting:

(1) State facilities, upon receiving any moneys credited to a juvenile offender in its custody, shall deposit the funds in the juvenile corrections victim restitution fund pursuant to section 20-539, Idaho Code.

(2) Other public or private contract facilities housing juvenile offenders in department custody, upon receiving any moneys credited to or earned by a juvenile offender at the facility, shall directly distribute the moneys on or before the first day of each calendar quarter to the county court that committed the juvenile offender to department custody. Upon remitting moneys to a county on behalf of a juvenile offender, the facility shall report the direct distribution to the department for inclusion in the department's records.

History.
I.C., § 20-539A, as added by 2001, ch. 14, § 2, p. 16; am. 2012, ch. 19, § 32, p. 39.

Compiler's Notes. The 2012 amendment, by ch. 19, inserted "offender" following "juvenile" near the beginning of subsection (1); and, in subsection (2), substituted "juvenile offenders" for "juveniles" near the beginning of the first sentence and inserted "offender" following "juvenile" near the middle and near the end of the first sentence.

20-542. Juvenile corrections fund — Creation. — There is hereby

created in the state treasury, the juvenile corrections fund. Moneys in the fund shall be utilized by the department for construction and administration of facilities under the jurisdiction of the department of juvenile corrections, for assistance to a county or series of counties in constructing, contracting for or administering detention facilities for juvenile offenders, to coordinate training for juvenile detention officers and/or juvenile probation officers, and for alternative programs designed to help juveniles avoid the traditional juvenile corrections system. All moneys in the fund may be expended only pursuant to appropriation by the legislature.

History.
I.C., § 16-1849, as added by 1989, ch. 155, § 9, p. 371; am. and redesig. 1995, ch. 44, § 48, p. 65; am. 1999, ch. 155, § 2, p. 431; am. 2001, ch. 15, § 3, p. 17; am. 2012, ch. 19, § 33, p. 39.

Compiler's Notes. The 2012 amendment, by ch. 19, substituted "juvenile offenders" for "juveniles" near the middle of the second sentence.

20-547. Construction of act — Citation of act — Other code references construed. — This act shall be liberally construed to the end that the legislative policy expressed herein is achieved. This act may be cited as the "Juvenile Corrections Act of 1995."

History.
I.C., § 16-1848, as added by 1989, ch. 155, § 9, p. 371; am. and redesig. 1995, ch. 44, § 54, p. 65; am. 1995, ch. 277, § 12, p. 925; am. 2012, ch. 19, § 34, p. 39.

Compiler's Notes. The 2012 amendment, by ch. 19, deleted the former last sentence, which read: "On and after the effective date of this act, any citation in the Idaho Code to chapter 18, title 16, Idaho Code, shall be understood and construed as a citation to chapter 5, title 20, Idaho Code, unless the context otherwise requires."

20-548. Compensation — Amount — Crediting account of juvenile offender — Juvenile offenders not employees. — Each juvenile offender who is engaged in productive work under the jurisdiction of the director of the department of juvenile corrections may receive for this work such compensation as the director shall determine, to be paid out of any funds available in the department of juvenile corrections competency development account. After payment of restitution pursuant to section 20-538, Idaho Code, compensation shall be credited to the account of the juvenile offender to be used for payment of fines, reimbursement to the department of juvenile corrections for expenses directly related to that juvenile offender, and upon certain circumstances, payment to the juvenile offender upon release from the department of juvenile corrections.

No juvenile offender compensated under this act shall be considered an employee of the state or the department of juvenile corrections, nor shall any juvenile offender come within any of the provisions of the worker's compensation law, or be entitled to any benefits thereunder whether on behalf of himself or any other person.

History.
I.C., § 20-548, as added by 1997, ch. 265, § 1, p. 755; am. 2012, ch. 19, § 35, p. 39.

Compiler's Notes. The 2012 amendment, by ch. 19, substituted "juvenile offenders" for "juveniles" in the section heading and inserted "offender" following "juvenile" in the section heading, four times in the first paragraph, and twice in the last paragraph.

20-549. Curfew violations — Citation — Notification. — Violation by a juvenile offender of a curfew established by a municipal or county ordinance shall be punishable by a fine not to exceed three hundred dollars ($300), detention, or both. Fines shall be deposited in the county juvenile justice fund of the county where the violation occurred, or if such a fund has not been established, then in the current county expense account for juvenile corrections purposes in the county where the violation occurred. The imposition of detention shall be subject to the provisions of sections 20-520(1)(c) and 20-521, Idaho Code. Detention of a juvenile offender in a county jail or detention center for violation of a curfew is prohibited, unless the juvenile offender is an habitual status offender as defined in section 20-521, Idaho Code.

Any peace officer may issue a citation for violation of a curfew that shall thereafter proceed under the juvenile corrections act in the same manner as though the violation was charged by a petition. Citations shall be issued on the Idaho uniform citation form. The peace officer issuing a curfew citation may detain the violator and at the time the citation is issued shall make a reasonable effort to obtain the endorsement of the juvenile's parent or legal guardian on the citation. If the endorsement of a parent or legal guardian cannot be obtained with the exercise of reasonable diligence, a copy of the citation shall be hand delivered or mailed to the juvenile's parent or legal guardian by a peace officer at least seven (7) days prior to the date set for the juvenile's appearance. The citation shall provide a date certain for the appearance before a magistrate of the juvenile and parent or legal guardian.

When sentencing a juvenile offender for violating a curfew, the court may also enter any order authorized in section 20-520, Idaho Code. The court shall have jurisdiction over the parent or legal guardian of the violator pursuant to section 20-522, Idaho Code.

History.

I.C., § 20-549, as added by 1998, ch. 391, § 1, p. 1196; am. 2000, ch. 74, § 2, p. 157; am. 2012, ch. 19, § 36, p. 39.

Compiler's Notes. The 2012 amendment, by ch. 19, in the first paragraph, inserted "offender" near the beginning of the first sentence, updated a reference in the third sentence, and rewrote the last sentence, which formerly read: "Detention of a juvenile in a county jail for violation of a curfew is prohibited"; and inserted "offender" in the first sentence of the last paragraph.

CHAPTER 6

COUNTY JAILS

20-603. Authority to designate detention officers to act as peace officers. — All detention officers employed by the county sheriff who receive peace officer certification from the Idaho peace officer standards and training council shall have the authority given by statute to peace officers of

the state of Idaho. The county sheriff shall have the authority to designate detention officers to act as peace officers when engaged in:

(1) Transportation of prisoners or apprehension and arrest of prisoners who have escaped; or

(2) Apprehension and arrest of persons who are suspected of having violated the terms and conditions of their probation; or

(3) Arrest of a person pursuant to court order or arrest warrant; or

(4) Arrest of a person without a warrant in cases where there is probable cause to believe the person has committed a crime within the confines of a county jail.

History.
I.C., § 20-603, as added by 2000, ch. 145, § 1, p. 374; am. 2013, ch. 146, § 1, p. 342.

Compiler's Notes. The 2013 amendment, by ch. 146, added the subsection designations and added subsection (4).

Cross Reference. Idaho peace office standards and training council, § 19-5102.

20-604. Confinement — Order of the court.

Cited in: State v. Horejs, 143 Idaho 260, 141 P.3d 1129 (Ct. App. 2006).

20-605. Costs of confinement. — The county wherein any court has entered an order pursuant to section 20-604, Idaho Code, shall pay all direct and indirect costs of the detention or confinement of the person to the governmental unit or agency owning or operating the jail or confinement facilities in which the person was confined or detained. The amount of such direct and indirect costs shall be determined on a per day per person basis by agreement between the county wherein the court entered the order and the county or governmental unit or agency owning or operating such jail or confinement facilities. In the absence of such agreement or order fixing the cost as provided in section 20-606, Idaho Code, the charge for each person confined or detained shall be the sum of thirty-five dollars ($35.00) per day, plus the cost of any medical or dental services paid at the rate of reimbursement as provided in chapter 35, title 31, Idaho Code, unless a rate of reimbursement is otherwise established by contract or agreement; provided, however, that the county may determine whether the detained or confined person is eligible for any local, state, federal or private program that covers dental, medical and/or burial expenses. That person will be required to apply for those benefits, and any such benefits obtained may be applied to the detained or confined person's incurred expenses, and in the event of the death of such detained or confined person, the county wherein the court entered the order shall pay all actual burial costs. Release from an order pursuant to section 20-604, Idaho Code, for the purpose of a person receiving medical treatment shall not relieve the county of its obligation of paying the medical care expenses imposed in this section. In case a person confined or detained was initially arrested by a city police officer for violation of the motor vehicle laws of this state or for violation of a city ordinance, the cost of such confinement or detention shall be a charge against such city by the county wherein the order of confinement was entered. All payments under

this section shall be acted upon for each calendar month by the second Monday of the month following the date of billing.

History.

I.C., § 20-605, as added by 1973, ch. 2, § 3, p. 4; am. 1983, ch. 13, § 1, p. 48; am. 1986, ch. 115, § 1, p. 307; am. 1992, ch. 138, § 1, p. 427; am. 1994, ch. 362, § 1, p. 1135; am. 2009, ch. 177, § 1, p. 558; am. 2011, ch. 291, § 1, p. 794.

Legislative Intent. Section 21 of S.L. 2009, ch. 177 provided: "Legislative Intent. It is the intent of the Legislature that the revisions to Chapter 35, Title 31, Idaho Code, contained in this act, be reviewed by the Legislature three (3) years following the effective date of this act."

Compiler's Notes. The 2009 amendment, by ch. 177, updated the last section reference in the third sentence in light of the 2009 amendment of § 31-3502.

The 2011 amendment, by ch. 291, substituted "the rate of reimbursement as provided in chapter 35, title 31" for "the unadjusted medicaid rate of reimbursement as provided in section 31-3502(21)" in the third sentence.

20-607. Prisoner reimbursement to the county. — (1) The county sheriff shall seek reimbursement for any expenses incurred by the county in relation to the charge or charges for which a person was sentenced to a county jail as follows:

(a) From each person who is or was a prisoner, not more than twenty-five dollars ($25.00) per day for the expenses of maintaining that prisoner up to a maximum of five hundred dollars ($500), whichever is less, for the entire period of time the person was confined in the county jail, including any period of pretrial detention;

(b) Any other expenses incurred by the county in order to collect payments under this section;

(c) In pursuing reimbursement under this section the county may investigate the financial status of the person.

(d) The county where the person was sentenced shall charge the person a daily maintenance cost according to paragraph (a) of this subsection and shall seek reimbursement once the debt has been incurred.

(2) Before seeking any reimbursement under this section, the sheriff shall develop a form to be used for determining the financial status of prisoners. The form shall provide for obtaining the age and marital status of the prisoner, the number and ages of children of the prisoner, the number and ages of other dependents, type and value of real estate, type and value of real and personal property, type and value of investments, cash, bank accounts, pensions, annuities, salary, wages and any other personal property of significant cash value. The county shall use the form when investigating the financial status of a prisoner and when seeking reimbursement.

(3)(a) A prisoner in a county jail shall provide accurate information and cooperate with the county sheriff for purposes of satisfying subsection (2) of this section.

(b) A prisoner who willfully refuses to provide accurate information or cooperate as provided in paragraph (a) of this subsection shall not receive a reduction in his or her term under section 20-621, Idaho Code.

(4) At the request of the board of county commissioners, the sheriff of the county shall forward to the board a list containing the name of each sentenced prisoner, term of sentence and date of admission.

(5)(a) Within one (1) year of the release of a person as a sentenced prisoner from any county jail, a representative for that county may file a

civil action in the magistrate's division pursuant to the provisions of chapter 23, title 1, Idaho Code, to seek reimbursement from that person for the cost of incarceration. A civil action may be filed only after determining from the financial status form, as required in subsection (2) of this section, that sufficient assets are available to justify further recovery efforts and that further action to collect the daily expense for maintaining the sentenced person by the county will not cause the sentenced person or his dependents to qualify for public assistance.

(b) A civil action brought under this section shall be instituted in the name of the county in which the jail is located and shall state the dates and places of sentence, the length of time set forth in the sentence, the length of time actually served, and the amount or amounts due to the county pursuant to this section.

(c) Before entering any order on behalf of the county against the defendant, the court shall take into consideration any legal obligation of the defendant to support a spouse, minor children, other dependents or provide victim restitution and any moral obligation to support dependents to whom the defendant is providing or has in fact provided support.

(6) The reimbursements secured under this section shall be credited to the justice fund or current expense fund of the county to be available for jail maintenance and operation purposes.

History.
I.C., § 20-607, as added by 1997, ch. 102, § 1, p. 236; am. 2003, ch. 245, § 1, p. 635; am. 2007, ch. 85, § 1, p. 236.

Compiler's Notes. The 2007 amendment, by ch. 85, deleted "small claims department of the" preceding "magistrate's division" in the first sentence in subsection (5)(a).

20-618. Jail commissary fund. — County jails which provide commissary items to inmates, and collect the costs or a portion of the costs for such items from an inmate with sufficient funds to pay for items, are authorized to create a self-perpetuating commissary fund. The purpose of the commissary fund is to both supply and provide a fund from which reimbursement can be made to the county for an inmate's use or purchases of necessary hygiene items, recreational devices and other inmate care items, medical items and services, and any other debts incurred pursuant to this chapter. This fund shall be subject to a yearly audit authorized by the board of county commissioners.

History.
I.C., § 20-618, as added by 1994, ch. 29, § 1, p. 46; am. 1996, ch. 14, § 1, p. 34; am. 2005, ch. 181, § 1, p. 555.

Compiler's Notes. Section 2 of S.L. 2005, ch. 181 is compiled as § 20-619.

20-619. Fee for medical service. — (1) County sheriff departments administering county jails may charge a nominal fee of twenty dollars ($20.00) to any nonindigent inmate who has sufficient funds in his commissary or personal account for the purpose of seeing the jail provided doctor or nurse for a medical complaint. In the event that an inmate is indigent, such service shall be provided by the county at no cost.

(2) The county sheriff departments administering county jails may

charge actual costs to any nonindigent inmate who has sufficient funds in his commissary or personal account for pharmaceuticals prescribed or authorized by jail medical staff.

(3) A "nonindigent" inmate, for purposes of this section, is an inmate who has money in his commissary or personal account normally used for the purchase of personal items for the inmate.

(4) All debts incurred pursuant to this section may be collected from the inmate's commissary or personal account, in whole or in part, at any time during the period of incarceration, whenever moneys exist in or are placed into the inmate's commissary or personal account, provided that the jail has in place a process by which the affected inmate may contest the assessment of moneys owed. Collection of moneys owed may occur at any time, in whole or in part, until such time as the full balance of the moneys owed is completely retired, provided that there shall be no further efforts to collect the debt after four (4) years from the date in which the debt was actually incurred.

(5) The county sheriff may require the inmate to provide health insurance information including, but not limited to, group, plan and identification numbers. The county sheriff is authorized to submit medical costs to the inmate's health insurance company on behalf of the inmate.

History.
I.C., § 20-619, as added by 1994, ch. 213, § 1, p. 671; am. 2001, ch. 50, § 1, p. 92; am. 2005, ch. 181, § 2, p. 555.

Compiler's Notes. Section 1 of S.L. 2005, ch. 181 is compiled as § 20-618.

20-622. Inspection of jail by commissioners.

Supervisory Authority of Board.
County commissioners' supervisory authority under § 31-802 to control other constitutional officers did not extend to the sheriff's bail procedures. The commissioners were not empowered to direct the sheriff's conduct regarding bail, which was a matter within the sheriff's authority. Allied Bail Bonds, Inc. v. County of Kootenai, 151 Idaho 405, 258 P.3d 340 (2011).

20-625. Governor may order removal of prisoners. [Repealed.]

Repealed by S.L. 2013, ch. 145, § 1, effective July 1, 2013.

History.
1863, p. 596, § 9; R.S., R.C., & C.L., § 8546; C.S., § 9440; I.C.A., § 20-625.

CHAPTER 7

INTERSTATE CORRECTIONS COMPACT

20-701. Interstate Corrections Compact.

A.L.R. Validity, construction, and application of interstate corrections compact and implementing state laws — Jurisdictional issues, governing law, and validity and applicability of compact. 54 A.L.R.6th 1.

Construction and application of interstate corrections compact and implementing state laws — Equivalency of conditions and rights and responsibilities of parties. 56 A.L.R.6th 553.

20-702. Commitment or transfer of inmates.

A.L.R. Validity, construction, and application of interstate corrections compact and implementing state laws — Jurisdictional issues, governing law, and validity and applicability of compact. 54 A.L.R.6th 1.

Construction and application of interstate corrections compact and implementing state laws — Equivalency of conditions and rights and responsibilities of parties. 56 A.L.R.6th 553.

20-703. Enforcement of compact and effectuation of purpose.

A.L.R. Validity, construction, and application of interstate corrections compact and implementing state laws — Jurisdictional issues, governing law, and validity and applicability of compact. 54 A.L.R.6th 1.

Construction and application of interstate corrections compact and implementing state laws — Equivalency of conditions and rights and responsibilities of parties. 56 A.L.R.6th 553.

20-704. Hearings.

A.L.R. Validity, construction, and application of interstate corrections compact and implementing state laws — Jurisdictional issues, governing law, and validity and applicability of compact. 54 A.L.R.6th 1.

Construction and application of interstate corrections compact and implementing state laws — Equivalency of conditions and rights and responsibilities of parties. 56 A.L.R.6th 553.

CHAPTER 9

RESTRAINT OF PREGNANT PRISONERS

20-901. Definitions. — In this chapter:

(1) "Correctional institution" means any entity under the authority of any state, county or municipal law enforcement division that has the power to detain and/or restrain a person under the laws of this state.

(2) "Corrections official" means the official designated as responsible for oversight of a correctional institution, or his or her designee.

(3) "Extraordinary circumstance" means a substantial flight risk or some other extraordinary medical or security circumstance that dictates restraints be used to ensure the safety and security of the prisoner or detainee, the staff of the correctional institution or medical facility, other prisoners or detainees, or the public.

(4) "Labor" means the period of time before a birth during which contractions are of sufficient frequency, intensity and duration to bring about effacement and progressive dilation of the cervix.

(5) "Prisoner" means any person incarcerated or detained in any facility, including persons held under the immigration laws of the United States.

(6) "Restraints" means any physical restraint or mechanical device used to control the movement of a prisoner or detainee's body and/or limbs.

History.
I.C., § 20-901, as added by 2011, ch. 223, § 1, p. 610.

Compiler's Notes. Section 2 of S.L. 2011, ch. 223 declared an emergency. Approved April 6, 2011.

20-902. Restrictions on restraint of pregnant prisoners — Extraordinary circumstance. — (1) A correctional institution shall not use restraints of any kind on a prisoner known to be pregnant during labor and delivery, except as provided in subsection (2) of this section.

(2) In an extraordinary circumstance, where a corrections official makes an individualized determination that restraints are necessary to prevent a prisoner from escaping or from injuring herself or medical or correctional personnel, such a prisoner or detainee may be restrained, provided that:

(a) If the doctor, nurse or other health professional treating the prisoner requests that restraints not be used, the corrections officer accompanying the prisoner shall immediately remove all restraints; and

(b) Under no circumstances shall leg or waist restraints be used on any prisoner during labor or delivery.

(3) If restraints are used on a prisoner pursuant to subsection (2) of this section:

(a) Both the type of restraint applied and the application of the restraint must be done in the least restrictive manner necessary; and

(b) The corrections official shall make written findings within ten (10) days as to the extraordinary circumstance that dictated the use of the restraints. As part of this documentation, the corrections official must also include the kind of restraints used and the reasons those restraints were considered the least restrictive available and the most reasonable under the circumstances. These findings shall be kept on file by the institution for at least five (5) years and be made available for public inspection, except that no information identifying any individual prisoner or detainee shall be made public under the provisions of this section without the prisoner or detainee's prior written consent.

History.
I.C., § 20-902, as added by 2011, ch. 223, § 1, p. 610.

Compiler's Notes. Section 2 of S.L. 2011, ch. 223 declared an emergency. Approved April 6, 2011.

20-903. Notice to prisoners. — (1) Correctional institutions shall inform prisoners of the provisions of this chapter upon admission to the correctional institution.

(2) Within sixty (60) days of the effective date of this chapter, correctional institutions shall inform prisoners within the custody of the correctional institution by posting this chapter in a location accessible to all prisoners.

History.
I.C., § 20-903, as added by 2011, ch. 223, § 1, p. 610.

Compiler's Notes. The phrase "the effective date of this chapter" in subsection (2) refers to the effective date of S.L. 2011, ch. 223, which was April 6, 2011.

Section 2 of S.L. 2011, ch. 223 declared an emergency. Approved April 6, 2011.